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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ORGANIZATION

TUESDAY, MAY 19, 1987



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Polsinelli, C. (Yorkview L) for Mr. Cordiano

Ward, C. C. (Wentworth North L) for Ms. Hart

Clerk: Carrozza, F.



LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, May 19, 1987

The committee met at 3:24 p.m. in room 228.

ORGANIZATION

Clerk of the Committee: Ladies and gentlemen, I must ask you to elect a chairman. Can I have a nomination, please?

Mr. Allen: I propose that Richard Johnston be elected to chair this committee.

Mr. Davis: I nominate Mr. Callahan.

Mr. Jackson: That is cruel and unusual punishment.

Mr. Polsinelli: I nominate Mr. Grande.

Mr. Callahan: I nominate Richard Allen.

Clerk of the Committee: Are there any further nominations? If Mr. Johnston receives the majority of votes, there will be only one ballot.

Mr. Reyecraft: Are all the nominated candidates willing to let their names stand?

Clerk of the Committee: Those are the standing orders. All those in favour of Mr. Johnston, please raise your hands.

Mr. Polsinelli: Do we not hear speeches?

Clerk of the Committee: After the election.

Mr. Allen: On a point of order: Are we allowed to declare whether or not we wish to stand?

Clerk of the Committee: As I explained, if Mr. Johnston receives the majority of the votes, there will be no other vote.

Mr. Allen: I suppose, technically, that could settle it.

Mr. Ward: I think it is a valid point that the nominees be asked whether or not they wish to stand.

Clerk of the Committee: Mr. Allen, do you wish to stand?

Mr. Allen: I would prefer not, thank you.

Mr. Callahan: Would you like to ask me as well?

Clerk of the Committee: Yes, Mr. Callahan?

Mr. Callahan: I would love to stand, but I will not.

Clerk of the Committee: Mr. Grande?

Mr. Grande: No, thank you.

Mr. Polsinelli: It sounds like a back-room deal to me.

Clerk of the Committee: All those in favour of Mr. Johnston being the chairman? I declare Mr. Johnston chairman.

Mr. Chairman: I want to thank you for this overwhelming endorsement of my chairmanship. I can see that we are in for a good session again.

Mr. Callahan: I will get a chance to issue press releases now, Richard.

Mr. Chairman: We are now in a position to elect a vice-chairman.

Mr. Reycraft: I propose Dr. Allen as vice-chairman of the committee.

Mr. Chairman: Are there other nominations? All those in favour, please indicate? Mr. Allen is elected vice-chairman.

Mr. Davis moves that our meetings be transcribed from this point on.

Everything we have done prior to this could easily be erased from the record without any great loss to posterity.

All those in favour?

Motion agreed to.

Mr. Jackson: Tell all the people in Hansard to call their banks; they still have jobs.

Mr. Chairman: You have copies of a potential budget for the committee, circulated by the clerk. I will give you a brief rundown. If you have questions, the clerk will respond. This is based on last year's budget. It will take us through the session and the summer period on the presumption of a maximum three weeks of hearings during the summer recess and three weeks in the winter break.

The largest single amount, you will notice, is for advertising. I draw this to your attention. This is an amount equivalent to all the English and French dailies and some of the weeklies. If for one of our items, for instance, it might be appropriate to talk about bringing in more ethnic press in terms of the other languages, dealing with Bill 80, if we were to decide to do that during the year, the amount could go as high as \$40,000, but the clerk at this point has just done it on the traditional basis.

Are there any questions about the budget? If not, I will entertain a motion.

Mr. Baetz moves the adoption of the budget.

Motion agreed to.

Mr. Chairman: We need a motion to create a steering subcommittee. Can I have nominations? It will be one from each party plus the chair. Generally speaking, that is the way it works.

Mr. Grande: Richard Allen.

Mr. Chairman: Mr. Allen from the New Democratic Party.

Mr. Davis: Mr. Andrewes.

Mr. Chairman: Mr. Andrewes from the Progressive Conservative Party and Mr. Reyecraft from the Liberal Party.

Mr. Polsinelli moves that those be the representatives.

Motion agreed to.

Mr. Chairman: We now come to the question of ordering our priorities for this session. What the clerk has done is to lay down for you, just in numerical order rather than in any order of preference or anything, the private members' and government bills that are before us. The one government bill is Bill 190, An Act to amend the Mental Health Act, which was referred out to us in February; then there is Bill 3, standing in the name of Mr. Warner, which integrates community-based services for seniors; Bill 80, in the name of Mr. Grande, An Act to amend the Education Act; and Bill 92, moved by Mr. D. S. Cooke, although Mr. Cooke will not wish to proceed with that bill because, as you will recall, we dealt in the break with the amendments to the Nursing Homes Act.

As a committee in the last session, we had several motions before us in terms of ordering our business, none of which we are bound by because we are a newly constituted committee, but I think it is only fair that I remind members of what we have done and then you can make whatever decisions you want today.

On Tuesday, February 10, we moved the following: "That the social development committee, in the light of the committee's understanding of the business before it and without prejudice to the social development committee struck in the new session, deal with Bill 80, An Act to amend the Education Act, on a priority basis as the first order of business when the Legislature convenes on or about April 21, 1987."

Debate followed and after some time, the question being put on the motion, it carried by a show of hands: ayes 4; nays 2.

That was the last motion we had before us. Again, that is not binding on this committee, but it is our responsibility today to order our business.

If I might remind you, we cannot deal with estimates for at least two weeks following the introduction of the budget. That is the length of time that is normally required, unless there is universal assent within the House for the distribution of estimates books to the various critics and that kind of thing, giving them time to work on them before we deal with them. We have, from today forward, about two weeks.

Clerk of the Committee: I would like to clarify that the motion moved on Thursday, May 14, simply says that we have only today to meet unless the Legislature approves the schedule of meetings of the committee, which would be Monday, Tuesday and Thursday for the standing committee on social

development. Therefore, if you wish to meet again on Thursday, please move a motion authorizing the chairman to write to all three House leaders to make arrangements to meet on Thursday.

Mr. Chairman: I was going to say you will recall that our normal meeting days are Mondays, Tuesdays and Thursdays. As yet, that motion has not been passed in the House. We are presuming it will be following the budget, but as yet that has not been done. If we did want to meet on Thursday we would have to have a specific motion, depending on how you want to order our business, and I thought we would deal with that afterwards.

Mr. Andrewes: I think the matter of when we meet is still the subject of some negotiation among the House leaders--sorry; not the House leaders but the whips of the three parties. I do not think they have quite determined, as of this date, whether we will stay with the same meeting days or whether we will move to different days. I offer that only because I think if we do pass a motion requesting to meet, assuming that we are going to meet on a regular Monday, Tuesday and Thursday, that may not be the case.

Mr. Chairman: Thank you very much. That is very useful knowledge. Why do we not decide what we would like to start off with, decide when we would like to start off with it and then put our request through, understanding that the whips may have to fit us into a broader agenda that they have in terms of committee priorities?

Mr. Baetz: Has anything of great import happened since the last motion when you set the scale of priorities?

Clerk of the Committee: I am sorry. This is not a scale of priorities. It just happens they are numerically in order.

Mr. Baetz: Did you say you wanted to start with Bill 80?

Mr. Chairman: No, I said the motion by the last committee was that we would deal with Bill 80 on or about the time of our return. We have had no further legislation given to us at this stage. The list you have before you, of Bill 3, Bill 80 and government Bill 190, essentially are the three we have before us because Mr. Cooke's bill is no longer relevant.

Mr. Reycraft: Mr. Chairman, perhaps you can help me out. It was my understanding when we discussed the ordering of business the last time that Bill 190 had not been referred to the committee at that time. There was an expectation that it would be introduced in the Legislature and referred to us, but I did not know the referral had actually been done at that time.

Mr. Chairman: Does the clerk remember?

Clerk of the Committee: The bill was sent to us within the last two days of the House adjourning. A motion was moved in the Legislature to move all the bills that were in the committee to be continued in the next session, which is the one we have now.

Mr. Chairman: I think Mr. Reycraft's point is that on Tuesday, February 10, Bill 190 had not yet been referred to us but we were expecting it. I think you are correct.

Clerk of the Committee: You are absolutely correct, Mr. Reycraft. If you notice, it says it was referred February 11, 1987, so when we met last, this bill was not with us.

Mr. Chairman: That is right but it was clearly understood that it would be coming to the committee.

Mr. Grande: Since the last committee in February made a determination that the standing committee on social development would deal with Bill 80 on its return, and since obviously this group is going to be determining what is going to be on our agenda or what is going to be discussed in this committee, I propose that we begin discussions with Bill 80. I see two or three people here who are new since the last committee. The reasons are clear. Bill 80 was passed unanimously in the Legislature in December 1986. The Legislature ordered the bill to the social development committee. A lot of people in the province expect that the social development committee will deal with Bill 80.

There are pros and cons. It is not a bill everyone agrees with. If they did, we would not be discussing it at all; it would have been law years ago. The fact is that they are looking forward to coming before this committee to discuss and talk about the implementation stage of this bill.

Mr. Chairman: Can I interrupt for a second? We are dealing with questions initially. You now are dealing with the substance of what should be a motion, if you wish to make it. Let me see if we have other questions such as Mr. Reycraft's about what has occurred in the past. If not, you should have it in the form of a motion and we can have a debate and make some decisions. Are there other questions?

Mr. Allen: It is not so much a question. I recognize that probably two of these bills are most pressing; one is Bill 80 and one is Bill 190. Whenever you wish to dispose of this question, I think there are reasons to think Bill 190 ought to be referred to another committee, namely, the justice committee. It does deal with patients' rights. It is much better lodged under the activities of the Attorney General (Mr. Scott) than under this committee.

In all probability, a lot of people will want to make representations around the issues in that bill. For it to be first on our agenda, for example, and then to follow that with Bill 80 would either require that we engage in a very foreshortened kind of hearing, which would not be appropriate, or a longer one, which would delay too long. So, in contributing to the discussion at the moment, that is just an observation that members might well bear in mind, and I would make that kind of motion at some point.

1540

Mr. Ward: The point made by Mr. Grande and Mr. Allen is well taken, but my recollection of Bill 190 is that it was a carryover from some problems that we had with Bill 7 regarding voluntary and involuntary treatment under the Mental Health Act.

Mr. Chairman: That is right.

Mr. Ward: When we were dealing with Bill 7 at that time--I think it was in committee of the whole House--there was an effective date of April 1, 1987. Then, in the interim, when Bill 190 was brought in, an amendment was made to Bill 7 which changed the effective date of that clause to June 1, 1987, in order for the Legislature to dispose of the problem that revolved around that.

I almost think it is really not too much of a matter of choice. We only

have a matter of a couple of weeks maybe in which we have to dispose of that outstanding issue carried over from Bill 7 and incorporated into Bill 190. I really do not see that there is much choice in the matter.

Mr. Chairman: There is a procedural way around it, but it is basically the same principle as what was done originally. That is to have a separate bill which puts in a separate date extending it further. That would be required; you are right.

Mr. Ward: It is a pretty critical issue.

Mr. Chairman: The June 1 date is part of that legislation and yes, it was dealt with by the standing committee on administration of justice and then in committee of the whole House. I think it would be best that we move a motion and then make our decisions on this because some of this is basically the kind of argument one would make pro or con--

Mr. Ward: I just want to clarify whether that is correct from my memory, that is all.

Mr. Chairman: Yes, it is.

Mr. Grande, did you want to make what you were discussing into a motion, and then we can move from there?

Mr. Grande: Let me move then that Bill 80 be ordered for business in the standing committee on social development at its first available day. I do not know what else you need in that.

Mr. Chairman: You might be wise to include in it some notion of for how long. Is this for public hearing, or what is the nature of it?

Mr. Grande: Yes, all right. For the purpose of public hearings, and probably you would require at least two weeks.

Mr. Chairman: So you are telling us six sitting days?

Mr. Grande: Yes.

Mr. Chairman: Let me just see how we have this: that Bill 80 be ordered as the business of the standing committee on social development at its next meeting. Would that be the best way of doing it?

Mr. Grande: At the first available day or the next meeting.

Mr. Chairman: At the first available meeting day for the purpose of public hearings for a period of two weeks or six meeting days.

Would you like to speak to it, Mr. Grande?

Mr. Grande: I was already giving some information in terms of the reasons this bill should move forward. I was suggesting that there are tremendous expectations out and about in the province from all sources, not only from the multicultural community but also from teachers and school boards and other people alike, who want to deal with the bill, who want to come before us and help us in terms of what the best ways to implement this bill are going to be.

After we do that, it is up to the government to decide what to do with the bill when the committee reports it back to the Legislature. I also understand that the Minister of Education (Mr. Conway) and the Premier (Mr. Peterson) have committed themselves to issuing a discussion paper or a position paper, as it was formally called before.

Then it turned into a discussion paper, into the heritage languages and then into Bill 80. I would think the Premier or the Minister of Education would take the opportunity right now to make that available to us so that it can become part of the process of the hearings. We will then know what the government intends when it talks about Bill 80 or the principles of heritage language during the school day.

All round, it would do us all a lot of good to get on with this bill for the six days. It may not be enough, but then again, how much is enough time for anything? To be seen to be moving forward would at least give the people in this province who really want these principles embodied in this bill a reason to believe it is going to happen, as opposed to just being left behind and dying in the Orders and Notices or being killed.

I suggest to my committee colleagues that it would be a very wise move indeed to deal with Bill 80 and to get on with hearings.

Mr. Chairman: The motion is that as our first order of business, at the first available meeting, for the purpose of public hearings over two weeks or six sitting days, we would deal with Bill 80. If this motion were to pass, matters such as advertising would then be dealt with by separate motion. There are obviously some implications about how quickly you could actually convene public meetings out of this.

Mr. Reyecraft: I want to speak against Mr. Grande's motion. We have already discussed the two bills before us which are of the greatest priority. I think there is consensus on the two of them. The issue is which of the two should take priority over the other.

Bill 190, as has already been mentioned by Mr. Ward, has very significant and important implications for psychiatric patients. The importance of that bill was stated very clearly by the Minister of Health (Mr. Elston) when he introduced the bill in the Legislature in late January. It was acknowledged by the critic for the official opposition when he spoke on second reading of Bill 190 in the Legislature in late January. That bill is of great importance to the people who would be directly affected by it. Of the two bills before us, Bill 190 should take priority.

With respect to Bill 80 and heritage language programs, I have stated at this committee, and the Minister of Education has stated on a number of occasions, that we are committed to a review of the heritage language programs in the province. We think the best way to go about that review is to initiate discussion through the release of a paper by the Ministry of Education. The minister indicated some time ago that he expected that discussion paper would be available in late April. That obviously is not going to occur as planned. It is our expectation that it will be released later this month or very early in June. The discussion paper is nearly ready for release.

Following release of that, there should be a very thorough consultation. Perhaps that should include some public hearings. Following that, the drafting and introduction of legislation should take place.

The intentions of the ministry with respect to review of heritage language programs can dovetail very nicely with what Mr. Grande wants to see occur in this area in this province. The tentative timetable that has been indicated by the Minister of Education would allow us to proceed with Bill 190 now and then undertake either discussion or public hearings on Bill 80 or responses surrounding a discussion paper on heritage languages subsequent to that.

1550

Mr. Chairman: Just as a point of order from the chair, which I guess is not possible, I wonder whether the ex-parliamentary assistant to the Minister of Health could indicate where it says that June 1 is the deadline. It does not say so in the act itself.

Mr. Ward: It is in Bill 7.

Mr. Chairman: That has to do with the federal requirement, does it not, the Charter of Rights complaints?

Mr. Ward: No. The problem was that we made amendments to Bill 7 which were Mental Health Act amendments and there was an effective date in there. The effective date, once it went into the Legislature--I think there was a communication problem or whatever and there was the whole issue of voluntary and involuntary treatment--somehow, an amendment was put forward and carried.

Because of some second thoughts, it was decided that it should be referred to committee and there should be hearings on it. The effective date was changed. It was in Bill 7, it was changed, and Bill 190 was brought in. The effective date was changed to June 1 in Bill 7, and Bill 190 says it is effective upon royal assent. But Bill 7 was changed from April 1 to June 1 to give this committee and the Legislature time to complete Bill 190.

Mr. Chairman: Is there any further discussion on Mr. Grande's motion?

Mr. Ward: I have just one other point. When we went through this in, I guess it was, the committee on administration of justice--I am not sure how many members were here when we went through the exercise on Bill 7--at that time I think it is fair to say that there were groups that wanted some input, the Ontario Medical Association, for instance, the psychiatric workers and patients' rights advocates. I am not sure how extensive this process has to be, but there may be the necessity to have at least some modest input from both sides on this issue before the committee makes its determination.

Mr. Chairman: The clerk has just made me aware of the fact that there is a list of people who have asked to be heard on Bill 190, so perhaps we should know who they are before we decide how quickly we can do it and how we should do it.

Just to be clear on this, these are people who have called about the issue of Bill 190 in recent weeks. The clerk has indicated which ones wish to appear and which ones wish just to make comments essentially. You can see that there has been a fair amount of interest around appearance on Bill 190 from the public at the committee stage.

As Mr. Ward said, this is a very controversial piece of legislation in the sense of changing consumer powers within the existing Bill 7 legislation.

There is a lineup of people on both sides of the issue, I think it is fair to say, who would perhaps like just to talk about this in the context of civil rights and due process.

Mr. Polsinelli: I think we should strive as a committee to try to resolve both problems; the problem of Bill 190 and the problem of Mr. Grande's frustration, perhaps, with the committee's failure to date to proceed with Bill 80. It seems to me that there may be some type of a solution available.

I recall, when we were sitting in the justice committee dealing with Bill 7, that the amendments were made to the Mental Health Act at that point because the committee had the benefit of hearing only one side of the issue. Those amendments were later determined to be not the appropriate ones, at least in the eyes of the Minister of Health and of some of the advocacy groups. That is why the urgency of Bill 190.

There is a clear urgency for the committee to deal with Bill 190 on a priority basis, but there is also an urgency to deal with the heritage language issue. I am not quite sure how we can accomplish both of them, but I suggest perhaps that the committee in voting down Mr. Grande's motion could establish some type of time frame for dealing with the private members' business that was referred to it.

I think it is unfair for an individual, who through private members' hour has second reading of a bill, to find that there are roadblocks or, perhaps through the committee's individual decisions on the individual issues, to find that he can never bring that bill forward, never have public discussion, never have committee discussion of that bill.

If Mr. Grande's motion were to be defeated, and I will also be voting against it because I believe in the urgency of Bill 190, I suggest that perhaps one of the routes the committee can take is to deal with the private bills on a referral basis, so that the first ones that have been referred to the committee be dealt with first.

If we look at the present business before the committee, we find the only government bill before the committee is Bill 190 and then we have three private members' bills before us. You indicated earlier that Mr. Cooke would not be dealing with his, so we would have left Bill 3 and Bill 80 and Mr. Grande's bill would take its turn in order of referral to this committee. That is something I suggest we deal with once this issue has been disposed of.

Mr. Chairman: One thing I failed to remind you of is that there is still an outstanding motion from Mr. McGuigan on missing kids, which was the first--it was brought to us a long time ago--on which there has been some substantial change in terms of federal action in the last while. I am not sure what Mr. McGuigan's bill would be at this time. In the context you are speaking of we would probably want to hear more from him on it.

Within the few windows of opportunity, to use that wonderful phrase, for private members' business to be dealt with, there is the time between sittings of the House and this little period as we go from the throne speech through to the end of budget debate. That is about it.

Otherwise, some time by June 1, we will be asked to deal with the estimates of the various ministries. As you know, there are never enough hours to do what is already mandated there. That becomes the number one priority for us during the session. When you are dealing with any private members'

business, you have to do it in that context. It is possible to deal with it in the summer break if we do not have government business which is taking precedence for public hearings at that time. It often gets bumped.

Mr. Polsinelli: My point is quite simply that I think a process should be established in the committee so that when private members' business is referred to the committee at least the member who sponsors a particular bill knows when that issue is going to be dealt with. Leaving it to an ad hoc approach by the committee could mean that a private member's bill is bumped indefinitely. We are in a minority situation. We recognize that no individual party has the majority and can make any decision on any particular issue in committee, so we know that we need the consent of one of the other parties.

Historically, government business, as I have seen it in the past, has taken priority so we do not want to hold up the business of government by pushing government bills to the bottom of the barrel. They should take priority when it comes to committee dealing with specific issues, but there should also be something in place for the private member so when his bill is referred to the committee he can put a time frame on when his issue will be dealt with. I would propose a first-come, first-served basis with respect to private members' business.

Mr. Chairman: The standing orders do not mention anything about that at this point. We have dealt within this committee, have tried to establish our priorities each session on this. The complicating factor this time is that we have a carryover of private members' bills, which usually does not happen.

Mr. Polsinelli: Mine is a suggestion that should make the process better.

Mr. Chairman: You can make that as a motion separately, once we have dealt with this one.

Mr. Davis: It appears that we find our colleagues, who are fortunate enough to form a government, waffling again on their own commitments to heritage language. It seems to me that my colleague Mr. Grande and his colleagues--

Mr. Polsinelli: On a point of order, Mr. Chairman: The critic for Education should not learn to backstroke so quickly. We are not waffling on our commitment to heritage language. I was not. It has already been replaced. We are talking about the priority of business in this committee.

Mr. Chairman: It is not a point of order.

1600

Mr. Davis: If I could continue, we have noticed it quite often. Here we have the Liberal back-benchers to suggest there is a government position, which they do not want to bring out and have debated until some point in the future.

I think Mr. Grande is quite correct, and so are his colleagues, when they say it is imperative that, if we are really going to discuss the issue of heritage language for Ontario, the government bring forth its position--which, I understand, if it is not written, is very close to being written, all ready to be public--now, so that it can become part of the total debate and not held off in some corner to be used in the forthcoming election, whenever the government deems it fit to go.

What we find, certainly from Mr. Grande's point of view and those who have in any way been connected to the educational family, is that again we are introducing a tremendous piece of legislation that will have an effect upon local communities and educators, not just in Metropolitan Toronto, but across this province. Experience surely has taught us, and I do not need to remind you, Mr. Chairman, nor do I need to remind other people who are gathered here, that there is a need within the jurisdiction of education--I am sure in social services, as well--that when major initiatives into education are made we must provide public access so people can express their concerns and be heard, and are believed to have been heard, before the policies are initiated.

I would maintain that, in the tradition of the new government which has been in power for some, well, I do not know how many months and years--

Mr. Callahan: You will have trouble 40 years from now--

Mr. Davis: --which articulated this option of having an openness to the public that, with respect to Mr. Grande's Bill 80, we must provide for all the ethnic communities across this province.

It is not fair, nor is it just, to limit the hearings--and I am not sure Mr. Grande meant this, but when he tried to limit it within six working days of this committee, it really means the whole hearings would be held here in Toronto, that we would deprive ethnic communities that exist across this province, such as those in Sudbury, in southwestern Ontario and in the Ottawa area, the opportunity to make their cases heard before this committee, as well as the educators and, as Mr. Grande has so astutely pointed out, those who are opposed to Bill 80.

It seems to me this particular recommendation, or the private member's bill on heritage language, really is far more encompassing. It really has to have the airing of the people of Ontario. In that respect, I hope Mr. Grande will take a look at the time frame and enlarge it and bring into the whole process the Liberals' philosophy, which says open and unfettered hearings for anybody who wishes to come and make his case before this committee.

It seems to me, if there be no arbitrary deadlines put upon it, that it is an opportunity for the public to be heard. I think it is an important enough matter that we want to hear from all the people who are concerned about this issue.

Interjection: That would take 800 delegations.

Mr. Davis: Indeed, it may take 800 delegations, but at least the people of this province will know they were heard by this committee, that they had an opportunity to express their concern, that their input was considered when the decision was finally arrived at.

It only seems fair, as this present government has articulated that as one of the hallmarks of its incumbency, that we should continue with that kind of process. It would certainly be in the best interest of everyone to remind ourselves that Toronto is not the centre of Ontario--

Mr. Chairman: Nor of the universe.

Mr. Davis: --nor of the universe, and that we provide the opportunity for other jurisdictions across this province to have their say on this important piece of legislation, and that we encourage the Minister of

Education (Mr. Conway)--we may even, may I go so far as to say request, maybe demand--that he place his thrust in heritage language, which I understand will be in regulations and not legislation, which means there is the opportunity for no debate whatsoever on the initiatives that the Liberal government may wish to bring into heritage language, that the minister bring that into the forum so it becomes part and parcel of the total discussion.

That seems to me to be only fair and just. Certainly, it follows the proclamations of the Liberal party, which says it wants to have public debate and input into the policy decisions. What better opportunity than as we go across the province to hear and debate Mr. Grande's bill, for the Liberals to have their initiatives out there so they can be incorporated. Together we can bring about a policy that will be to the satisfaction of all concerned.

Mr. Chairman: Thank you, Mr. Davis, especially for the pre-Copernican views of the world you sometimes express.

Mr. Polsinelli: I think our Metro hearings should be in Scarborough Centre.

Mr. Chairman: Hear, hear. And Scarborough West from time to time.

Mr. Allen: I certainly appreciate the point that Mr. Ward has made with regard to the importance of this bill, but the importance of the bill lies in the content and in the issue and not in the date of June 1.

Recognizing that there has been a commitment to proclaim this bill on June 1, none the less I would have to say, without wanting to get into a full discussion of the contents of the bill, it is not one that many people are very happy about that I am aware of. There will want to be a very substantial discussion and probably a longer discussion than we are able to devote in this committee prior to June 1, or perhaps in any other committee.

From that point of view as well, it seems to me to be unwise of us to launch ourselves on that track. I repeat that, inasmuch as it was a matter that was before another committee which has dealt with the issues that provide the context for the consideration for the rights in question, its more appropriate place is in the standing committee on administration of justice and not here.

That said, on the other hand, it seems to me there is every reason for us to proceed as quickly as we can with Bill 80. We know that hearings can get under way very quickly. There are many groups just waiting to make a presentation, both for and against. The matter has been before the educational community, the ethnic communities and, indeed, the province for a very long time.

The matter does need early resolution, as early a resolution as we can provide for it. So for us to look at a circumstance in which we would deal with Bill 190, given its controversial nature, and then face estimates and never get around to Bill 80, in point of fact, seems to me to be a most unfortunate way to proceed.

I appeal to the committee to hold in abeyance our decision about Bill 190, but certainly to make a decision to proceed with Bill 80 as our first business and then to consider whether we should not be asking the House leaders to take Bill 190 somewhere else and give it the amount of time that is needed to settle that question properly rather than leave it in its present

state and attempt a quick and early passage.

Mr. Ward: I do not know how to put this any more succinctly, but as of June 1, involuntary patients in mental hospitals within this province cannot be treated by physicians.

Mr. Andrewes: No, no. Let us be clear. It is just those who decline to take treatment.

Mr. Ward: They can decline to be treated.

Mr. Chairman: Yes. Those who are competent.

Mr. Ward: I did say involuntary patients, in fairness, Mr. Chairman. He may have missed that.

We discussed this in the administration of justice committee and an amendment was put. It was defeated and it went to the Legislature. Somebody was asleep at the switch when the amendment was reintroduced, and I understand that the official opposition supported an amendment which it did not fully understand and was quick to support the government when the amendments were put forward to have this carried over and the date extended to June 1.

I urge the members of the Conservative Party to consult quickly with their House leader for a refresher on this issue. With no disrespect to Mr. Grande's bill--it is an important issue, and I know how strongly he feels about it--the fact remains that the whole issue around Bill 190 is critical. There is a critical time line and, frankly, I do not see how it can be put off. I really do not think there is a choice in the matter.

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Mr. Reyecraft: It is very enlightening to hear the former chairman of the Scarborough Board of Education talk so fervently about heritage language programs and the urgency to proceed with this wide-open, unrestricted dialogue on how they can be improved. I am not sure how that compares with his voting record as a trustee with that board.

Mr. Davis: Do you want to check? You will find we consulted with our ethnic communities on a regular basis.

Mr. Reyecraft: And then decided to do nothing.

Mr. Davis: That was the decision we made, but not to reconsult it, which is more than you are prepared to do.

Mr. Chairman: A fine supporter of heritage language--let it go.

Mr. Reyecraft: That is the point I wanted to address. There has been no waffling by the Minister of Education on this issue. He has said very clearly that he wants to undertake a full, meaningful review of the heritage language programs in this province, and the reason for undertaking that review is to study ways in which the existing programs can be enhanced.

Mr. Davis: All he ever does is study things.

Mr. Callahan: Better than a shotgun approach.

Mr. Davis: He also said he does not support Bill 80.

Mr. Reyecraft: He has indicated he wants to start that consultation with a discussion paper, and the discussion paper will be available and will be released either later this month or early in June, within a very few weeks.

Mr. Davis: July.

Mr. Reyecraft: No, it will not be July; it will be available before then. There are practical problems in getting a paper such as this printed, translated and out before the public in the province. We are in the midst of that process right now.

Mr. Grande: I will really try to get hold of myself in terms of the kinds of things Mr. Reyecraft is talking about, but to be charitable, I think he really does not know what is taking place within the Ministry of Education. He does not know what his leader is going around the province saying about this on different multilingual television programs. He is then saying to other people a different kind of thing altogether. At one place he says that within two weeks we are going to have a discussion paper; that was back in February. Then we go to the end of March; then we go to the end of April; then we go to the end of May; then we are going to go, as you said now, to June.

One begins to question whether you are really serious about this. If you are really serious about this--and do not let me say you are not serious; let me say that you are serious about this matter--then what are you concerned about? You say you are going to issue your discussion paper. Are you concerned about debate taking place in the open in a committee of the Legislature, or do you want the debate to occur and the input to be given to the Minister of Education in camera?

You are talking about legislation. Somewhere down the process there will be legislation, but we have legislation now. All we need to do is to make sure this legislation is such that it is implementable.

Mr. Reyecraft: You are saying we do not need legislation but you do. Is that what you are saying?

Mr. Grande: You have an opportunity to bring in the amendment to make sure this legislation is implementable, as I have the opportunity to bring in amendments. I have six or seven amendments to Bill 80 that I want to bring in. Of course, the Conservative Party has the opportunity to bring in amendments to the bill.

In other words, let us have an open discussion here. Let us have input from the different people in the community in Ontario who are interested in this kind of bill. Let us bring in the necessary kind of amendments. Let us change it. Let us make sure the principles remain intact, but let us get on with the job.

I am seriously coming to the point of questioning whether you really believe what you are saying. I apologize for that, but I am being brought to the point that I really believe you do not believe what you are saying yourselves, because you are getting different messages from the Minister of Education. When you, Mr. Ward, are going to say to the Conservative members of this committee, "Reviewing that position and trying to get the Conservative members of this committee to vote against Bill 80 and to dealing with Bill 80 in this committee--"

Interjections.

Mr. Grande: Let me say it was already mentioned that nobody questions the fact that Bill 190 is important. Nobody questions that. It was already suggested that a motion could be brought forward which would put Bill 190 into the standing committee on administration of justice, and the justice committee can deal with it instantly, right away. In other words, you are not missing anything by Bill 190 being dealt with in the justice committee as opposed to the social development committee. Once you are assured that will take place, I do not know what is blocking you.

Mr. Chairman, I apologize for the outburst, but I think some of those people back there have to get their act together, sooner or later.

Mr. Andrewes: I have listened carefully to the debate, and I certainly recognize the importance of Bill 190, given the time constraints that we were under. I want to correct what may be the misrepresentation of the timing on Bill 190 that Mr. Ward has put on the record, and that is that on June 1, it is only those competent involuntary patients who refuse treatment who may not be able to be treated. That does not represent a very broad cross-section of the people in mental health facilities. Nevertheless, it is a very important group of people.

In trying to recognize the importance of Bill 190, I have gone through the sheet the clerk has provided us with that lists the various individuals and groups who wish to appear, and I have come up with 26 groups. There may be some duplications, and that may reduce once a time is given to them and they find they have to prepare a brief. Some may not then wish to appear.

What I am suggesting is that we devote two weeks to public hearings on Bill 190, report the bill back to the House for clause-by-clause study and third reading and begin our public hearings on Bill 80.

On Bill 80, I would assume Mr. Grande would want to give some consideration to my colleague's suggestion that we need to travel to get better input. That timing would also give the Minister of Education ample opportunity to release a study paper so that it could be incorporated into our hearings. I would propose to do this in amendment to Mr. Grande's motion. I do not know how to do that.

Mr. Chairman: If you want to move what you are suggesting, I do not think you can amend his motion. Essentially, it is talking about doing Bill 190 first, which would be counter to what his motion says. It would be easier to vote against Mr. Grande's motion and then reintroduce your motion.

Mr. Andrewes: Make a new motion.

Mr. Chairman: I would remind members that if we wish to travel while the House is sitting, we have to get special permission to do so from the House leaders. Otherwise, we would have to leave the actual travel from this place until the break.

Mr. Davis: I think it is important that, as I understood my colleague, however we deal with Bill 190, with Bill 80 we can begin those hearings here in Toronto without having to travel.

Mr. Chairman: Sure.

Mr. Davis: I think we could leave it to the House leaders to decide whether we travel while the House is sitting or in the break, but I certainly would like to reiterate that there are many ethnic communities across this province which perhaps could not come to Toronto because of travel costs or time from work, and they should have the opportunity to make a comment on what is really a very innovative bill and needs to be discussed. I do not mind whether we travel when the House is sitting or whether we do it in the summer, but I think it could still be ready for implementation--

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Mr. Polsinelli: It seems that election fever is running rampant. We are all aware of that. I can appreciate that Mr. Grande needs as much publicity as he can get in his riding, but I think the voice of reason has finally shone through from Mr. Andrewes. I think this is something I personally can support and is something we have been trying to say all along: that Bill 190 is an important piece of legislation that in fact can save lives. It is the type of bill this committee should give priority to. I applaud Mr. Andrewes for his latest statements and I will support him on this.

Mr. Callahan: I move the question.

Mr. Chairman: The question has been moved.

Mr. Callahan: What is the question?

Mr. Chairman: That the motion moved by Mr. Grande would be put, is what that means. Shall I read it to you again to remind you of what it says?

"That Bill 80 be ordered as the business of the standing committee on social development on its first available meeting date for the purpose of public hearings for a period of two weeks or six sitting days."

Motion negatived.

Mr. Chairman: Mr. Andrewes moves that the social development committee commence public hearings on Bill 190 as soon as possible for a period of six sitting days. Following these public hearings, the bill would be reported back to the House for clause-by-clause study and third reading.

Further, that the committee commence hearings on Bill 80 when it has completed its hearings on Bill 190.

What we are saying is that the social development committee hold public hearings on Bill 190 as soon as possible for six sitting days. Following these hearings, the bill will be reported to the House for clause-by-clause consideration. Further, the committee will deal with Bill 80 following its consideration of Bill 190.

Do you wish to speak to that further, Mr. Andrewes?

Mr. Andrewes: I think I have spoken to it. I do not know what I can add other than that I hope it is a reasonable compromise to the positions put forward by the Liberals and New Democrats. I know the issue of travel that my colleague Mr. Davis speaks to. I think we need to address that issue once we have established a timetable for beginning or commencing the study of Bill 80.

Mr. Chairman: There are a number of questions that flow from this,

but sensing there might be a consensus on this, as our first step let me deal with this first and then we will move on to the other procedural matters that will flow from it.

Mr. Grande: I would like to know this: After the six sitting days on Bill 190 it is understood, is it not, that estimates will be coming to the social development committee? Does this motion mean that we override the estimates and get on to Bill 80?

Mr. Chairman: Yes.

Mr. Grande: All right. Fine.

Mr. Chairman: We would deal with Bill 80 before we go to estimates, unless the House orders us to do otherwise, of course. What you are doing is expressing the will of this committee to undertake these things in this order.

Further, on this first step, there will be a couple of subsequent things we will have to deal with.

Motion agreed to.

Mr. Chairman: Thank you very much, Mr. Andrewes. You have been very helpful. There is a role for you at Meech Lake.

Mr. Andrewes: No, there is not.

Mr. Chairman: They are a little short of shoe salesmen.

Mr. Andrewes: I am not yet learning to walk on water.

Mr. Chairman: We need to make a couple of decisions at this stage. One would be about Bill 190. Perhaps we can deal with Bill 190 first, just on the ordering of this. Is it your interest that we invite people who have expressed an interest to come?

Mr. Ward: We have only six sitting days. We are pretty well stuck with going by invitation.

Mr. Chairman: Might I suggest that we use the list the clerk has circulated as a basis for making some decisions about who should be invited, and that the critics and government members might give me, through the clerk, any other names they would like to have come before us? I will pick out some of the obvious ones in terms of organizations to try to get them on for our first meeting day. The steering committee would then meet with this list I would get to determine who we are going to prioritize for our six days of hearings.

Would that be acceptable? In other words, there are some groups that are quite straightforward in terms of representing a number of interest groups, such as the Friends of Schizophrenics and the Clarke Institute of Psychiatry that we could schedule for the first day, whenever that might be. As a steering committee, we would try to meet with the names of any other people those caucuses wish to have come before us and then try to establish a priority for them.

Mr. Callahan: I agree with what you have said. In anticipation of that taking place, I wonder whether it might not be appropriate if a letter

went out to each of these groups telling them that we have scheduled only six days, that we are going to do that and indicate to the others that if they wish to send in written briefs, we would be happy to receive them. I think we should have all the information.

Mr. Chairman: We will do that immediately, requesting at least written briefs and saying that we will be contacting them as soon as possible in terms of possible oral submissions as well. Is that okay with you, Mr. Grande?

Mr. Grande: Fine.

Mr. Chairman: This is presuming an early sitting period, perhaps as early as next Monday. All right? I doubt we could do it before Monday, giving people a few days to get themselves together to make presentations to us. This again is dependent on what Mr. Andrewes was telling us about the possibility of our sitting days being changed if that is under negotiation at the moment. I will try to schedule a first afternoon's hearings for us, presumably next Monday, unless otherwise directed by the House leaders or the whips. On the question of Bill 80, there are a number of matters to--

Clerk of the Committee: We are not advertising.

Mr. Chairman: We are not advertising for Bill 190. I know the minister has a long list of people who have approached him about this as well, so we could easily check that. Perhaps Mr. Reycraft, the parliamentary assistant for the Minister of Education, might ask Ms. Hart or the Minister of Health (Mr. Elston) to give us the names of interested parties they have. That would be useful.

This would take place presumably starting the week of May 25 and the first week of June, on Bill 190. We are talking about starting Bill 80 in the second week of June. We have two things to consider. Do we wish to travel while the House is sitting and to make that request, or do we wish to advertise initially to see what the interest is out there and hold hearings here at the Legislature for a prescribed period of time that you will decide upon, and then decide what we will do subsequent to that in terms of using the recess for provincial travel? That is the easiest thing to try to accommodate with the House leaders; let me put it that way. Is that acceptable to you, Mr. Grande?

Mr. Grande: That is fine.

Mr. Chairman: Therefore, what length of time would you like to set aside for public hearings here at the Legislature while we are in session? Two weeks, which was Mr. Grande's initial motion, and then talk about rescheduling for the break? Is that acceptable? It is acceptable. Fine.

Mr. Grande, you might as well let people know what is happening so we can line up the early part of the hearings. Perhaps your new Education critic could do the same for us, Mr. Davis, and Mr. Reycraft, if you could line up any people you would like to have come before us.

Mr. Davis: I have a point of clarification. If we start for those two weeks and we find there is--I assume there will be--a tremendous response in the city of Toronto, we can then just extend that time. Is that what you are saying?

Mr. Chairman: What I am suggesting at the moment is that we set aside those two weeks, which would be the second and third weeks of June, for dealing with this. By that time, the subcommittee will have had a chance to meet, look at what has come in and decide what it thinks we are going to need to do on it. Then we can report back to you in terms of any plan; whether we will have an extra meeting time while we are in session or whether we want to put it all off to the break and do estimates during the rest of the session. I remind you that there has been a practice in the House of not dealing with estimates during the break. This would get us quite far behind schedule in terms of estimates. That might be something that might confine us to just two weeks.

Mr. Davis: Can you clarify something for me? When you indicate we are going to hear for two weeks, that circulates right across the province saying that if there is a request, we will travel. Is that how you word it? I am curious as to how you word that.

Mr. Chairman: I am not sure exactly how we word it. We would say that we will be commencing public hearings of the Legislature on such and such a date and groups that are interested in making written and oral submissions to the Legislature on the subject of Bill 80 should contact the clerk. That is how we would leave it at this stage. Following that, we would make judgements about where we would go in terms of where the interest comes from.

Mr. Davis: Can I follow that up? There is no indication in that submission that the committee would be prepared to travel if there were delegates who were outside of the Metro area.

Mr. Chairman: That can easily be done. I suggest that I run the completion of the wording of the ad past the steering committee members to make sure it is acceptable.

Mr. Davis: That is fair.

Mr. Callahan: Is it anticipated that the hearings, particularly the travel hearings, will exceed what we have requested in our supplementary budget?

Mr. Chairman: This a matter we may very well have to look at again. As I was indicating, if we wish to advertise Bill 80 through the ethnic press, the cost involved would exceed the \$25,000 we have put down and would move closer to \$40,000. This may be something we should consider today rather than at a later time. Would it be your interest that we try to get this to as many of the ethnic press outlets as we can locate through the listings?

Interjection: Yes.

Mr. Chairman: All right. That means I need a motion.

Mr. Davis moves that the budget be amended to reflect advertising on Bill 80 to the ethnic media as well as to the French-language and English-language papers.

Motion agreed to.

Mr. Chairman: Does that deal with what you were concerned about, Mr. Callahan? The response from that will really tell us--

Mr. Callahan: Then we can determine what we need in terms of supplementary for travel in exact money.

Mr. Chairman: We can always submit that later.

If there is no other business, I thank the members for this stirring beginning to the committee's business.

The committee adjourned at 4:33 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT
ORGANIZATION

THURSDAY, NOVEMBER 26, 1987

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Also taking part:

Reville, David (Riverdale NDP)

Clerk: Carrozza, Franco

Staff:

Gardner, Dr. Robert J. L., Assistant Chief, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, November 26, 1987

The committee met at 3:29 p.m. in committee room 1.

ORGANIZATION

Clerk of the Committee: Good afternoon, my name is Franco Carrozza. I am clerk of the committee. It is my duty to call upon you to elect a chairman. Can I have a nomination please?

Mr. McGuinty: I nominate Peter Adams.

Mr. Tatham: I move nominations closed.

Clerk of the Committee: Are there any other nominations? If there are no other nominations, Peter Adams is the chairman.

Mr. Chairman: I thank Franco Carrozza for conducting that part of the meeting. I welcome you all here. I welcome the members of the New Democratic Party and of the Conservative Party. As our members are all very new, we are grateful to you for being here today. We look forward to some guidance and some interesting work on this committee.

My first duty is to conduct the election of a vice-chairman. Are there any nominations?

Mr. McClelland: I take pleasure in nominating Mrs. LeBourdais as vice-chairman of this committee.

Mr. Tatham: Second.

Mr. Chairman: Are there any other nominations? I declare Linda LeBourdais vice-chairman of this committee.

As I understand it, the next item you have on the agenda before you is the motion to have the committee meetings transcribed. As I understand it, the transcription of consideration of estimates is normal and assumed. What we are considering here is a formal motion that if and when bills are referred to us, we will have transcription of those meetings too. Is that correct?

Clerk of the Committee: Yes.

Mr. Chairman: I think that somewhere in this material there is a phrasing for this motion. Is that right?

Clerk of the Committee: The motion will have to be made.

Mr. Chairman: Will someone move this motion, perhaps Mr. Jackson?

Mr. Jackson: So moved.

Mr. Chairman: Thank you; a seconder for that?

Mr. Reville: Seconded.

Clerk of the Committee: The committee does not require a seconder.

Mr. Chairman: It does not require a seconder.

Clerk of the Committee: That is correct.

Mr. Chairman: Those in favour?

Motion agreed to.

Mr. Chairman: The next item is to establish a subcommittee. As I understand it, this is a subcommittee which is essentially a steering committee and which is an organization that is required particularly for those meetings at which we consider other bills. It is not something which is really necessary for organizing the consideration of estimates.

As I understand it, this subcommittee or steering committee in the past has had representation from all the parties and has concerned itself with the ordering of meetings concerning other bills. Given that we are inexperienced, I suggest that we leave this until the committee is here completely, until we have full and proper representation from the NDP, for example, and that we consider it later. But I am more than willing to entertain discussion about that.

Mr. Reville: Maybe for the benefit of the new members of the committee, the steering committee is a very useful committee when it comes to scheduling deputations. If members of the committee have particular groups or individuals they want to appear before the committee, the steering committee is a good place to do that, and to decide how long a hearing might be useful and whether the committee should travel to exotic places, to Zephyr and other such places, both within and out of Ontario. A lot of these issues can be dealt with easily in the steering committee. Normally a steering committee operates on consensus--

Clerk of the Committee: They must report back.

Mr. Reville: --and then it reports back to the full committee with its recommendation which then must be approved by the committee. So it is probably a good idea to delay the appointment of the steering committee for a little while until, as you say, we have the full complement of people here.

Mr. Chairman: So this steering committee does not have power. It simply reports back to the House. It is an organizational thing, as I understand it.

Mr. Reville: Yes.

Mr. Jackson: It reports back to the committee.

Clerk of the Committee: To the committee.

Mr. Chairman: Are there any further comments on that?

Mr. Tatham: What is the complement of the committee to deal with that?

Mr. Chairman: There would one NDP, one PC and one Liberal in the chair.

Mr. Tatham: Why do we not make the motion to do it?

Mr. Chairman: We are discussing installing it.

Mr. Jackson: To maintain the office of a neutral chair, it is generally recognized that there are three members of the steering committee, of which the chairman is not one.

Clerk of the Committee: That is not quite correct. You are quite right in the sense that the subcommittee, as Mr. Reville said, works on a consensus. Even if there were consent on a report to the full committee, the full committee can debate it and then accept it or not accept it, as it so wishes. It merely removes the work load from all the committee and it can meet whenever there is time.

As you are probably are aware, there are only three meetings scheduled for you. Some of the members could be utilized, for instance on a Monday morning or a Wednesday morning, for a subcommittee, so it is very flexible for the committee to work with.

Mr. Jackson: My point of clarification is that it is not necessarily the chairman of the committee who acts as the representative for one of the parties. That was not necessarily the experience of the social development committee. That was the only point I was making.

Clerk of the Committee: You are quite correct.

Mr. Jackson: Because of the importance of maintaining at least the office of a neutral chair--the point that has not been raised, and I raised it in another committee yesterday, is that sometimes there are points of conflict on a decision whether a certain late-filing delegation should appear before the committee. It is clear that is a matter that might require some delicate negotiations. It is sometimes appropriate to remove the chair from that since all those requests and conflicts are filtered through the chair. Therefore, we always maintain the neutrality of the chair as to whether the party is able to come before you or not, because you at no point said yes or no. You only agreed to refer it to the steering committee to deal with. Then you are guided by the recommendation. In the spirit of just making that clear, I thought I would lay that out.

Mr. Chairman: I, for one, am more than willing to entertain that sort of discussion and that sort of advice when the time comes. We are certainly not here to--first of all, I would like in some ways to be as traditional as possible, and in other ways I would like to be as creative as possible on this committee, so by all means.

We are discussing essentially whether we should postpone this item and not establish this subcommittee, whatever its form, now. Can I assume that most people agree with that?

Interjection: Agreed.

Mr. Chairman: Under other business, I have a few items I will mention now and then perhaps other people have things. I would like to mention first the research support that we receive, and I have something to say about

that. I would like to mention the committee's budget. I would like to mention our schedule, the work that is before us, in so far as I know it. I would like to comment very briefly on the Provincial Auditor's report with regard to standing committees. Are there any other items of other business?

Mr. Tatham: Let us see what you say when you--

Mrs. O'Neill: Mr. Chairman, I wonder if you are going to give us any direction or explain at all the position of those items that were on hold, not finished or completed? Where do we fit into that scheme of things?

Mr. Chairman: I could do that in so far as I know it, and certainly the clerk can enlighten us on that, when I get to the schedule part, the work that is before us, as I understand it.

Mrs. O'Neill: Okay.

Mr. Chairman: First of all, with regard to research services available to committee, my understanding is that we do have research support and Bob Gardner is here from the research department. Bob, would you like to say something for one minute, please?

Mr. Jackson: Might I suggest that he join us near or at your side, given that is a custom, but it also overcomes Hansard's problem with respect to getting him transcribed. If we could invite him as a rule, that would be great, instead of being asked to be invited. Is there any problem with that?

Mr. Chairman: You are invited, Bob, if you would be relatively brief.

Dr. Gardner: I certainly will. From legislative research, we do not have a permanent research officer assigned to this committee. Basically, what we do is we assign the best person for the particular issue or piece of legislation you are studying. So we will match up our expertise and experience with what you need at the time. That person, once assigned, then will stay with you through the duration of whatever hearings there are, so we very much emphasize stability.

Our role here is we report to the chairman. We can do any number of things for the committee at your request and direction. Now, we often like to start off with some kind of background material, again on whatever issue is at hand. That can range from a very short memo to a relatively large briefing paper on whatever the issue is in other jurisdictions, how it is treated and patterns and directions.

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We routinely provide press clippings on whatever the hearings are doing, how they are being covered in the local papers, both here and when you are on the road. We provide a summary of the evidence as presented to you in terms of the key recommendations that you are hearing from the various briefs and delegations before you and, at the end of all this, if it is an open-ended issue as opposed to legislation, we draft your report under your direction.

That is a less complicated procedure than one would think at first glance. Basically, you discuss what you want your framework to be, your key recommendations. We take it away and put clothes to it, so to speak, put the words to it and bring it back to you. You may want some changes, a different emphasis. We take that away and bring it back. It is a relatively painless and

quick process. We are at your direction and we can provide any number of services.

Mr. Chairman: Thank you. Franco, do you have anything to add to that?

Clerk of the Committee: No, Bob did an excellent job explaining his work.

Mr. Tatham: If you give us this audited report and you talk about developing expertise in financial issues, I wonder whether Dr. Gardner and his people qualified to do that.

Dr. Gardner: Again, depending upon which facet of the report you want to look at, we could certainly make somebody available to help out. In our unit we have economists, people trained in public administration and political science, a range of backgrounds, so I am sure we could.

Mr. Chairman: If I could interpret Charlie's point, if he had an individual request as an individual member of the committee--

Mr. Tatham: In other words, if you are going to look at money--

Mr. Chairman: Let us say there was a financial point, would you provide him, as a member of the committee, with financial background?

Mr. Tatham: As the committee.

Dr. Gardner: Yes, certainly.

Mr. Chairman: The committee certainly would, Charlie. But would you for Mr. Tatham in particular?

Dr. Gardner: Of course. Again, it would depend upon how the request came to us. Beyond committee work, we provide confidential and nonpartisan research to any member upon request. That could be for you personally. You would then use it at your leisure.

Mr. Tatham: I would rather have everybody know.

Dr. Gardner: A common procedure would be for you to suggest to the chair and to the committee at large that here is an issue that you could stand having some research on. If there is agreement there, if the chair agrees, we go away and do it for you and bring it back to you.

Mr. Chairman: Any other questions or comments on that?

With regard to the committee's budget, we strike our own budget. As this is a new parliament, as yet we do not really know what is before us. Franco has suggested to me that his office might begin to prepare an interim budget based on the sorts of budgets that have existed in the past. It seems to me that is a reasonable procedure.

There is no urgency for us to strike a budget today or even next week but, if that were a suitable procedure, in other words, that we look at past budgets and come up with something, by the time we know what the pattern of this committee is going to be, we can then alter that accordingly. Is that appropriate?

With regard to the schedule, it is my understanding that items before the committee in the previous parliament lapse. At the moment, we are awaiting direction from the House leaders in the three parties. It is my understanding that we will be considering estimates at first and for some considerable time.

It is also my understanding informally, and I think it is still informal, that it is Skills Development first for 7.5 hours. They allocate us both the estimates and the time for consideration of those estimates. This, by the way, is informal. It is skills first, then disabled persons and then Education. That is the last word I heard and I would imagine the other parties have heard similar things. That may well change.

Can I make one more point? It is my understanding that as the critics have to be given seven days' notice that the most likely date for our first formal meeting is a week Monday at 3:30 in this room.

Mr. Tatham: Re this matter of allocation, who sets the allocation?

Mr. Chairman: The House leaders. They negotiate it between them.

Mr. Tatham: Is there any relevance to the amount of dollars involved and the numbers of hours spent on each area?

Mr. Chairman: As you know, that is one of the points that the Provincial Auditor picked up, and the answer appears to be no. On the other hand, my understanding is--

Mr. Tatham: Can we negotiate that at all?

Mr. Chairman: First of all, let me tell you one thing. Apparently the House leaders are considering the form of the committees, including the statement in the auditor's report. That is the advice I have received.

If I can go further, though, and Franco will certainly pick me up on this, we are subject to the direction of the House in terms of what comes to us. I read in this material that one exception is the fact that the annual reports of agencies, boards and commissions are automatically referred to us.

There is an area where one could pick up an item in an annual report I would imagine, because they are automatically referred to us, and we could as a group, instigate activity on that report, but in terms of the estimates, Charlie, as I understand it, we wait until the House, which is represented by the leaders of the three parties, refers that material to us. I am looking at my colleagues here. Is that reasonable?

Mr. Reville: As one of the people who is involved in these meetings of House leaders, I can tell you that we are almost finished the negotiation. What forms the basis of the negotiation are the ministries whose estimates are going to be looked at and in which order and the amount of time that will be spent on each ministry. Quite often in the past, critics were asked by their respective House leaders and whips how much they would like to spend on a particular estimate and whether they would like to be early or late. Those pieces of advice are taken into consideration by the House leaders during negotiation.

I can tell you, for instance, that it is not seen to be fair to require a brand-new minister to do early estimates. They get a chance to see how other estimates go before they are thrown into the bear pit.

Mr. Tatham: Yes.

Mr. Reville: There are always problems about estimates because of the schedule of particular ministers or the Premier and of other business that the House is considering, such as legislation. There will shortly be a reference, and I think you are correct in saying that probably December 7 will be the earliest. Given the notice provisions and the provision of briefing books to critics, December 7 looks like a pretty good guess. This is all informal though.

Mr. Chairman: That is right. I must say that. I did say that quite clearly.

Mrs. O'Neill: Is the seven and a half hours carved in stone?

Mr. Chairman: Yes, that is it.

Mr. Jackson: By mutual agreement, we can reduce it to six.

Mrs. O'Neill: If we got very involved in this committee, we cannot extend it to eight?

Mr. Chairman: In the rules or whatever they are, at the end of the seven and a half hours I move, without debate, that the remaining estimates be passed or whatever the expression is. That is it.

Mr. McGuinty: On that particular point, and actually Yvonne raised the point ahead of mine, who determines the time allocation? It seems to me offhand as a novice that this is a kind of preimposed closure, which in a sense limits the freedom of the committee or the scope of the committee. What is the basis, for example, for setting up an official time? Why not nine and a half hours?

Mr. Chairman: The auditor obviously was of a similar turn of mind but, as I see it, the sort of (inaudible) you just mentioned, as I read what the auditor said, they are the sorts of things that the report did not fully appreciate. Now I am not saying that they were not right in some respects. They gave a good example of Health, which is \$11 billion getting five hours, and something else, which was only \$1 million or whatever it was.

I think for the moment, if I might, and we can discuss it as long as we like, that is the way it has gone. Now I do think those of us who are new are reasonably fired up about this thing and as much as we can do in the way of making this committee work in creative ways I think we should do. As we gain experience and have the advice of our colleagues, I think we should do it, but I do not think at this point it is any use us saying that the seven and a half hours, which is still unofficial, is inappropriate or not.

1550

Mr. McGuinty: I was asking for information from some of our colleagues with more experience. In their experience there have been occasions when this preset time allocation has been restrictive.

Mr. Jackson: No. In our most recent history, we have worked in a sort of ratio of time to expenditure. For Education we did 20 hours because it was \$7.9 billion. Women's issues would get three hours, not because it was of lesser importance, but because it was not a ministry, it was a secretariat that provided guidance to other ministries to spend money.

A better example for the committee would be Education at \$7.9 billion. It got 7.5 hours. The disabled, which is not a full-fledged ministry and spends probably \$1 million--I rest my case--they get 7.5 hours as well. That was negotiated by the House leaders.

Mr. Reville: I think these questions are valuable questions. Members of the committee should know that many of the concerns you are raising now have been raised since time immemorial by members of this Legislature and will probably result in quite a major change to the way we do estimates some time in the new year. If you have views as you go through estimates, please feel free to share those views with your own House leader, because that will go into the grist of the new decisions which in fact have been recommended by a committee of the Legislature in the past to change drastically the way we do estimates. I suspect we are going to see that change. Do not get too committed to this process is all I am suggesting, because I hope it is going to change.

Mr. Chairman: If I could recommend that the standing orders are here and there is a good deal of information there. I do recommend to you the first page of the Provincial Auditor's account which I thought was extremely lucid in terms of the way the standing committees fit into the process that we are all involved in.

Could we leave that item then? We certainly are going to return to it. You can tell from the discussion there.

The auditor's report.

Mr. Jackson: Mr. Chairman, if we are on scheduling, my understanding is we may prorogue on December 17. So if we commence on December 7, we can possibly--I have to prepare for Skills Development. I may have to do the work on the disabled. That means it is inconceivable that we will get to Education by year's end.

Clerk of the Committee: That is correct. If I may answer your question, Mr. Jackson, in the discussion we always have 7.5 hours. That would encompass a week, because we meet from 3:30 p.m. to 6 p.m., so that is 2.5 hours. Three meetings completes one week of Skills Development, if that is what we are going to receive.

Mr. Chairman: That is further clarification just for me by the way. I had not made that calculation.

Mr. Jackson: One more point, Mr. Chairman, if I might, that it is clear and understandable that we do not meet in estimates when we are not in session, unless that rule is going to be changed.

Clerk of the Committee: To answer your question, Mr. Jackson, you are quite correct. To clarify, there is a standing order in the Legislature that when there is a legislative bill on the same matter as we have--for instance let us say Health, if we are dealing with Health in the estimates committee and there is a bill considering the Ministry of Health, then the committee cannot meet because the critics must be in the Legislature debating the matter. That is also dealt with in the standing orders.

Mr. Jackson: So we will not do estimates between the period of December 17 and when the Premier and the government House leader agree to call back the government.

Clerk of the Committee: Your conclusion is correct.

Mr. Jackson: I am just doing this to help the committee.

Mr. Chairman: It is good stuff.

Mr. Jackson: Finally, we have not been advised nor has the chairman nor has the committee clerk of any bills that the government anticipates at this time being referred to the committee which would constitute our business in the off-season, the period between December 17 and when the government calls the House back.

Clerk of the Committee: That is correct. I have not heard of any bills being proposed to come to this committee. A few might not be aware of what Mr. Jackson is talking about. The standing committees usually meet when the Legislature is sitting, but sometimes when there are important bills--last year there was Bill 80 on the heritage languages--the Legislature permitted a committee to meet during the interval, and they gave us four weeks, I believe?

Mr. Jackson: Yes. On separate school funding we went right through the summer. On the drug bills, we went through off-season times. You can order up a considerable amount of business when the House is not sitting, depending on the government's agenda and that which is referred. I just want to make it more meaningful for the committee in terms of what we are talking about in terms of items referred.

A bill referred to this committee should be placed in time. As yet we do not have anything to fill the period unless something occurs before December 17 and before our last committee meeting, giving our chairman time to go to the House leaders, hat in hand, asking that we be allowed to sit during the interim.

Clerk of the Committee: As you know, we usually have about a day to do that.

Mr. Jackson: And the hat in hand is another matter altogether.

Mr. Chairman: I will buy a hat.

Mr. Tatham: The bill is usually referred by the House, is that it?

Clerk of the Committee: That is correct.

Mr. Jackson: We can create work for ourselves, within reason.

Mr. Tatham: What I am thinking of is that if there is something, if we are going to be off or whatever, if there is something that should be done, we should be doing it.

Mr. Chairman: Maybe we should be working in our constituencies, Charlie.

I know what we are talking about; I have not heard informally, but I am aware of this, the point of this discussion. It is very well meant. I urge us all--I am talking now to the new people--we must read this stuff and know about it. I have some sense of it. Can I move on to the consideration of the auditor's report.

In my position as the chair I am supposed to be neutral, and I will certainly endeavour to be so. It is up to the committee to direct itself, and

so on, but as I mentioned, I urge that everyone read that section of the auditor's report. It clearly is influencing the House leaders and it should be influencing other people, including us.

There are a number of items there I at least understand. One of them had to do with attendance and substitution. The auditor pointed out this is an important part of the process, particularly the financial process--that is what he was dealing with--of the Legislature and that attendance is low, sporadic and substitution is haphazard. I can only say that, and you can only read it, but I hope we all take that into account. I think it is very important.

He also mentioned the format of material which is presented to us. That is something that on your behalf I will take on myself, to go to the ministries and draw that to their attention. It is their business, of course, how they present material to us, but as I read the paragraph concerned, it was very appropriate--the way material is presented to us so that we can understand it, as Charlie mentioned.

You also mentioned, and Charlie did too, the question of financial expertise on the committee. The committee is selected for a great variety of reasons, but I am not sure that financial expertise is one of the criteria. I think the intent of the auditor's statement was that we should focus more on financial questions than in the past. That is our business, and the political side of these things, of course, is far more important than, let us say, an accountant might think. However, as the auditor in his wisdom has mentioned that, I do urge that we try to gain sufficient financial acumen that we can address financial questions. That is a kind of exhortation, but for what it is worth, there it is.

There are some other items there which have to do with the House leaders more than with us, but I do hope that we--these gentlemen here know all about it--will read them.

Is there any other business?

Mr. Jackson: On your last point and only by way of explanation, reading the report will lack a certain meaning if certain basics about the committee operation are not understood by committee members. To that end, I wonder what amount of orientation new members receive. I received everything in one day. The absorption rate is poor at best, for me anyway. For example, the issue of substitution becomes significant. All committee members are aware that we get paid extra moneys above our honorariums in order to attend, and the auditor is concerned about that.

1600

Clerk of the Committee: That is when the House is not meeting.

Mr. Jackson: That is why I started building that understanding in my first line of explanations. However, I will not go through that now.

I am hopeful that if our clerk or the Clerk's office could prepare some basic summary for the members of the governing party on this committee, given that there are no new members on this committee from the other two parties, they might benefit from a little more clear understanding of how the committee operates. Then the auditor's report will be far more meaningful to them as opposed to just reading it.

Mr. McGuinty: A while back, just anticipating the possibility of being on this committee, I asked Bob Gardner to prepare such a brief. He prepared a wonderful concise and comprehensive background paper which I think--

Mr. Chairman: All our members have it.

Mr. McGuinty: I am not sure if that is exactly what you had in mind, Cam, but I found it to be excellent.

Dr. Gardner: In answer to Mr. Jackson's last question, basically I did a historical review of what the committee had been doing in the past in terms of issues covered. I did not really speak to procedural matters. That would certainly be--

Mr. McGuinty: We have another background, though, that was given to us elsewhere by the services bureau.

Mr. Chairman: I think the Clerk's office could do something. Cam, we have gone to some trouble to try to do this among ourselves. The clerk has helped, but what Cam says is absolutely true. It does apply to us, the new members. I think when we absorb some of this material we should meet from time to time on procedural matters. I am sure that Franco and/or Bob will be glad to join us and take us through some of this exercise in order that when we start, we can deal with the matters at hand.

Mrs. O'Neill: I think Mr. Jackson has a point. Even just as we began, there were no seconds required.

Mr. Chairman: Yes.

Mrs. O'Neill: If we had this kind of thing on one page, it would be helpful. It is all there in all different kinds of configurations, boards, whatever, and every one of them has a different set of bylaws. What has been suggested here about substitutes and what that means, I would like to see on one piece of paper, if that can be done. If it has to be four, I will take it.

But I really think--procedures, bylaws, or whatever this is called, I know of what Mr. McGuinty speaks. I know it is somewhere in my office, but that orientation was about two and a half months ago. I would really prefer if we could have something on this. I appreciate what has been prepared, but it is not procedural.

Mr. Chairman: I am sure the Clerk's office would be willing to do that, but could we do it this way? We will read the stuff. I do believe there is a context here tying into the House and so on. We will then have a meeting, the clerk will be there, and we will go through some of these things. On the basis of that meeting you could perhaps prepare us such a sheet. Would that be appropriate?

Mrs. O'Neill: Okay, sir, at your pleasure.

Mr. Cousens: My apologies for being late. I was in a meeting.

Mr. Chairman: I was just going to ask if there are any other items of public business. Could I ask for a motion to adjourn?

Mr. McGuinty: I am sorry, but there was another item. The timing of our meetings. That has been set. Ordinarily, we meet on Wednesday?

Mr. Chairman: Monday, Tuesday and Thursday.

Mr. McGuinty: Monday, Tuesday and Thursday. Are these dates flexible?

Clerk of the Committee: No, inflexible.

Mr. Chairman: I am afraid, as I interpret it, I did ask about the Thursday. I know the member's concern.

Mr. Jackson: It has to be at the House.

Mr. Chairman: It has to be at the House and that is the way we are regulated. I guess it ties in with other committee obligations, and so on.

Mr. Jackson: Especially when there are only 16 of us to cover 12 committees.

Clerk of the Committee: To answer your question, Mr. McGuinty, the Legislature passed a motion on November 23. It is a motion by the government House leader, Mr. Conway, and it states the days of the committee meeting. If I may read it to you, "The standing committee on social development will meet on Monday, Tuesday and Thursday afternoons." It is stated in the Legislature.

Mrs. O'Neill: In conjunction with that, we meet at 3 or 3:30. Is the adjournment time flexible? It goes until six o'clock, and we can extend, as I understand.

Mr. Jackson: By motion.

Mr. Chairman: The motion that is in here.

Mrs. O'Neill: OK, but that would be determined each time.

Clerk of the Committee: Can I answer that question? The standing order provides that if the committee wishes to meet past 6:30 it can only do so on Monday nights, as it often hears public presentations. Then we must move a motion to request permission from the Legislature to meet that night. In reality, it is quite inflexible.

Mrs. O'Neill: I am sorry. Would you repeat that?

Mr. Chairman: The answer is you are going to think that it is fairly inflexible. Is that right?

Mrs. O'Neill: I understand everything is inflexible, but what I want to know is, you are talking about the Thursday evening, for instance. You just mentioned Monday there as being something different.

Clerk of the Committee: Monday, Tuesday and Thursday.

Mrs. O'Neill: Yes, but you just mentioned Monday.

Mr. Chairman: You are saying Monday is the only night you can go on.

Clerk of the Committee: Yes.

Mr. Chairman: Thursday nights you cannot. Right?

Clerk of the Committee: Yes.

Mrs. O'Neill: We cannot extend, even if we voted to.

Clerk of the Committee: We are talking about 10 to 15 minutes, and Mr. Jackson is (inaudible).

Mr. Jackson: I am talking less these days.

Clerk of the Committee: In here it says six o'clock and it stops.

The committee adjourned at 4:07 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

MENTAL HEALTH AMENDMENT ACT

TUESDAY, MAY 26, 1987

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitution:

Reville, D. (Riverdale NDP) for Mr. Grande

Clerk: Carrozza, F.

Witnesses:

From the Ministry of Health:

Elston, Hon. M. J., Minister of Health (Huron-Bruce L)

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)

From the Ontario Association of Professional Social Workers:

Lurie, S., Member, Committee on Health; Chairman, Mental Health Subcommittee

Individual Presentations:

Draper, Dr. R., Chief Psychiatrist, Brockville Psychiatric Hospital

Galbraith, Dr. D., Medical Director, St. Thomas Psychiatric Hospital

LEGISLATIVE ASSSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, May 26, 1987

The committee met at 3:39 p.m. in room 151.

ORGANIZATION

Mr. Chairman: I will call to order the standing committee on social development. We are here today to start our public hearings on Bill 190, An Act to amend the Mental Health Act.

I will get into the question of the agenda in a minute or two, but there are some matters of procedure that I would like to get straightened around with the members if I could before we start to hear from the minister, whom we are expecting in a few minutes.

First would be that the motion that is allowing us to operate at the moment says we are going to have six meeting days on this subject then, following that, we would move to Bill 80 for six meeting days. That would mean, as you can see by the agenda here, we would be completing our hearings on Monday, June 8, and could begin the public hearings on Bill 80 on Tuesday, June 9, because, as you recall, we sit Mondays, Tuesdays and Thursdays. That would mean, if we were to do that, we would have hearings that would end on June 22. The six sitting days would be June 9, 11, 15, 16, 18 and 22. Then we would have time after that to undertake other business. That would be the timing we would have.

In order to do this and to send out the kind of public notice we would require to advise people that we were starting hearings on Bill 80--not that these would be conclusive hearings, but that we would be starting them--it seemed to me we really needed at the earliest opportunity--and I was hoping today--to get some approval from you for a revised budget to cover the advertising to the ethnic media that we had agreed to in the last meeting and to allow the clerk of the committee and myself, in consultation with the steering committee, to use the usual wording for the advertising, to see if we could get it in to those papers as soon as possible.

As you know, most of those papers are weeklies, not dailies, and therefore there is a greater problem in terms of just making sure they get circulated before we hold the meetings.

What I would like to do, if I might, would be just to confirm first whether the schedule, that we would start on June 9 and end on June 22, suits people's purposes. I see general agreement on that. Okay.

The clerk has sent around to you a revision of the budget from the one we passed, which includes an increase to \$45,000 for advertising to cover all the ethnic media. You may recall the figure he tentatively gave us last time was around \$42,000, but in talking with Ms. Mellor, one of the other clerks who has just undergone this process, she says she has over \$42,000 in bills already and some further invoices still to be received. So we thought, to be on the safe side, we should budget a couple of thousand dollars above that for those advertising placements.

Mr. Reycraft: A single ad?

Mr. Chairman: This will be a single ad placed in all the English and French dailies in the province and all the weekly and daily ethnic papers around Ontario on a one-shot basis only. I will go into the wording and remind you about that later, but I really need a motion which would indicate that we should revise our budget to include this larger amount for advertising, for a total of \$153,440 for the coming year.

Mr. Andrewes so moves. Any discussion? Seeing none, all those in favour? Agreed.

The advertising we have been using lately has just sort of indicated that we are holding public hearings and written submissions are desired. "If you would wish to attend"--I forget the actual wording, but it is usually left to the discretion of the committee. Our presumption would be that this would be a real testing of the waters to see what the interest is, how wide it is and from what parts of the province there is interest, so we could make decisions about whom we might hear above and beyond those six days we are initially blocking out.

We will put in that kind of usual ad and I will run it past the members of the steering committee before we send it out. First, if we can have a motion to that effect, that we should place the usual ads, then we can have a discussion about any changes you might wish in the ads to reflect the particular needs of the communities we may be approaching.

Mr. Andrewes moves that we place the usual style of advertisements in the papers.

Any discussion?

Mr. Reycraft: Are those going to be brought to the steering committee for approval?

Mr. Chairman: Yes, I think what I would try to do, rather than trying to necessarily convene a meeting, would be to run them past each of you, that is, Mr. Reycraft, Mr. Andrewes, and--in this case, I am not sure if you want Ms. Hart.

Ms. Hart: No.

Mr. Chairman: No. So, Mr. Reycraft, Mr. Andrewes and Mr. Allen, I would run the wording past each of you and you can make your comments on it. If there are any changes, I will notify each of you of the changes that are being requested by an individual member.

Motion agreed to.

Mr. Chairman: I would hope that would allow us to place those ads within four days or some time next week. I would hope they would meet most of the papers' deadlines and then get out a good week and a bit before we would actually be holding the hearings.

Of course, we will have from the critics a short list of people whom we could start booking in on June 9 anyway so that we can have an orderly beginning of that hearing process. Again, it would be understood that it will be up to the committee to decide what priorities it wishes to establish, who

should come before us and if and when we should try to meet again on this issue later. We will deal with that when we see what the response is.

I wonder if I can deal first with the agenda that has been brought before you. So you know how it has been arrived at, for those of you who were not at the last meeting, the clerk submitted to us a list of people who had, over the last number of weeks, approached us wishing to attend or to make comments on Bill 190. From that list, we then contacted almost all of the groups and organizations. As well, the ministry provided us with a list of names, many of whom are already part of this group and a few of whom were new.

Because we have limited our time to just six sitting days, we have obviously had to ask each of these groups to be fairly brief in what their presentations will be. If you look at some of the days, there are people there who, like ourselves, often take a good 20 minutes to clear their throats rather than to make a full presentation. I will try to allow them some leeway, but we are going to have to be fairly tight on it.

We have been fairly lucky in being able to fill out the agenda without, at this stage, having to refuse many people; I guess that is the easiest way to put it. Basically, what we have done is to accept groups first and limit the number of individuals who would actually be coming forward at this stage, because if we start to open it up to individuals, we are going to find ourselves not able to stay within the time constraints.

As you can see, we have a couple of tentative bookings next Tuesday. If we have some indication that they are not available and there are others that as yet we have not been able to squeeze into the agenda, then we will try to make those adjustments. I think there was one person or group on the ministry's list that we have not been able to accommodate in the process at this point. That is in addition to the Canadian Bar Association, which has said it does not wish to appear.

Mr. Callahan: Do you propose that each of these delegations will have, say, 15 minutes for the presentation and 15 minutes for questions, perhaps on a rotational basis by party?

Mr. Chairman: I think what we will try to do is leave it up to the groups how they want to present, but for the time that is available for questions, if we could limit it to a simple rotation, that would be the best way of operating. As you know, what normally happens is that within the first day or two people find themselves hard to control and the self-control is not there, but then gradually it develops after a while and we manage to do that sort of thing.

Ms. Hart: I have not had an opportunity to discuss this with all of my colleagues, but there has been a suggestion made that if we could in some way telescope it a little more so that we had one day at the end, we probably could complete clause-by-clause. I raise it now, not by way of motion because, as I say, I have not had a chance to check with anybody, but merely to let you know that there will be a proposal to that end.

Mr. Chairman: I actually had a discussion before the meeting with Mr. Reville, who was also suggesting we should perhaps look at the question of clause-by-clause in committee. Our present motion, which Mr. Andrewes moved as part of a compromise in our discussions the other day, had us meeting on this for public hearings for six days and then sending it back to the House to committee of the whole. To change that, we could entertain a motion. If

somebody has one ready, today would be a good day to do it when we have these few minutes before the minister appears.

If we could deal first with any items about the agenda itself for public hearings, if people have difficulties with it or if they agree to that kind of approach, we will let the groups present any way they wish. If there is time left over for questions, then I will divide it up among the parties as equally as possible. Okay. There is agreement on that.

On the matter of clause-by-clause discussion, is there anybody who would like to make a motion on this? Again, at this stage we are committed, as in these past couple of motions, that we would go to Bill 80 on June 9, but as of June 22 it would be possible to set aside time for clause-by-clause debate, if you would like to move that.

1550

Mr. Reville: I will place a motion, and then if the motion is in order, Mr. Chairman, I would like to speak to it briefly.

Mr. Chairman: Mr. Reville moves that the previous committee decision be amended and that the committee schedule two days for clause-by-clause debate of Bill 190 following the public hearings on Bill 80, to wit, June 23 and June 25.

Mr. Reville: I believe those are the days that would be available. I would like to speak to that briefly.

Mr. Chairman: All right. The motion is to amend the previous motion so that we would now have clause-by-clause debate for two days, June 23 and 25, up to that period of time.

Mr. Reville: Yes. Quite right, Mr. Chairman. It may be possible that following the minister's statement today, the issues will be somewhat narrower in respect to Bill 190 than we currently believe they are. In fact, we may be able to cut the issues quite easily and there will be a small number of amendments from each of the parties during the clause-by-clause stage--at least a small number of controversial ones.

The reason I have suggested that we do clause-by-clause on June 23 and 25 is that I do not believe, given the schedule that is before us, that we are going to make up an adequate amount of time to do it prior to June 9. I think it would be inappropriate to rush people who wanted to depute or, for that matter, rush the committee.

Quite frankly, the concern I have is the concern I have had right along, that the government's commitment to Bill 190 has not always been clear, particularly given the toing and froing that has occurred since Bill 7 was passed in December 1986. In fact, today the minister was attempting to introduce Bill 68, which would have postponed Bill 7 for a third time. That did not happen.

What I am hoping will happen is that we can attend to Bill 190, which is intended to expand in some respects the Mental Health Act and, as written, amends Bill 7, although we will have much to talk about in that respect. We should try to organize our business so that the minister is assured that Bill 190 will be dealt with in the House prior to adjournment for the summer, so that Bill 68, which suggests that Bill 7 should be postponed until January 1,

1988, could be amended by the minister to a more appropriate date, such as July 10, for instance. I would offer that to the minister as an interesting date.

That is the reason I think we should try to do the clause-by-clause here. I suspect it will be a much more thoughtful process than trying to do it in committee of the whole House and that, in fact, the committee of the whole House may be somewhat clogged up by the time we are finished our deliberations here. Those are my reasons for suggesting we approach it in that way. I have been able to have some preliminary discussions with other members of the committee, but I would be delighted to hear their comments at this stage.

Ms. Hart: I share some of the sentiments of my colleague about conducting clause-by-clause stage in the House. Let me complete that thought. It seems to me that with the last bill we did in committee it was a useful exercise to have the clause-by-clause here. If we have questions and the group is here, readily available to us, we avoid making mistakes. I think it was good process.

My concern with the motion made by Mr. Reville is that if we leave it until the last two sitting days in June, that may not be enough time to get it back to the House and get it passed. The government is committed to the passage of Bill 190. We obviously have a problem in terms of a deadline date. The dates that have been floating around all House leaders are towards the end of June, and I am just not sure that if we leave it until June 23 and 25 that is going to give us enough time.

I would propose an alternative. On the last sitting day that we have in this current session for Bill 190, there are four people or groups scheduled to be heard. We do not sit before four o'clock on any day. It seems to me that it would not be terribly difficult for us to sit at 3:30 p.m. to hear these groups and to deal with it in that fashion.

I do not want to preclude anybody we should be hearing. It is just that I think it is in their interest as well that we deal with the clause-by-clause and that we get it on as expeditiously as possible so that the House does not adjourn without this being passed.

Mr. Chairman: I am not exactly clear what you are saying. Are you saying that we should begin the clause-by-clause after we have heard all these people on June 8 or that we should not hear these people on June 8?

Ms. Hart: The last sitting day is Monday, June 8. What I am suggesting is that those people scheduled for June 8 be scheduled on previous sitting days at 3:30, if that is at all possible.

Mr. Chairman: There is a difficulty. Some days we will be able to start at 3:30. There is no doubt about that. The difficulty in being able to guarantee a start at 3:30 is our problem.

Ms. Hart: I understand that. It just seems to me that it is useful for the groups as well to have an early opportunity for us to have the clause-by-clause in this committee.

Mr. Chairman: The clerk would like to try to get in. The clerk is just saying that the people on the last day, in fact, chose the last day specially because they were not sure they could be prepared, or some of them could not be prepared, to be here before that. That might cause a problem in terms of scheduling.

Ms. Hart: This is an additional piece of information that might change that.

Mr. Chairman: The other thing is that, in theory, depending on how many amendments there are, they could be dealt with in a day, which would be June 23, which would allow two more sitting days that week, plus June 29 and June 30 of the following week to order it into the House for third reading, which will presumably be a fairly quick process at that stage, although it is always dangerous to predict these things.

Mr. Andrewes: If I am correct in my assumption, I think all of this is hypothetical. At the present time, we have Bill 68 before the Legislature which puts off the implementation of the effect of Bill 7 until some point well in the future, and I think we cannot really have a useful discussion on this subject until we hear differently.

Mr. Chairman: Perhaps the timing of the minister's arrival is appropriate in that you have raised that.

Hon. Mr. Elston: Is this an omen?

Mr. Chairman: It could be.

Mr. Reville: Enter laughing.

Mr. Chairman: What is it? Never mind. Something about ill winds, but I do not want to raise that.

Hon. Mr. Elston: I am feeling fine.

Mr. Chairman: The clerk also reminds me that it always possible, if we finish our deliberations on clause-by-clause before the House has risen on a given day, it is possible, with the unanimous consent of the committee and with the unanimous consent of the House, for us to report back at that very moment to the House to speed up the whole process of getting it brought in for third reading quickly. That is something else to keep in mind.

1600

We are just talking about when to do the clause-by-clause. Mr. Reville has moved a motion that it would be dealt with on June 23 and/or June 25 right after we finish our six days of hearings on Bill 80. Ms. Hart is raising a concern that those might be the last couple of days of the House and if that were the case, we would not be able to guarantee its passage at third reading. Mr. Andrewes has raised the point that, in fact, he finds it difficult to conclude this discussion as to how this should develop until he knows about the presumption of Bill 68 and the date of January 1988 as the day that it would be effective.

That is why I was saying it is propitious you arrived at this moment. Perhaps we can have a short discussion about Bill 68, which, for viewers, is An Act to postpone the Commencement Date of certain Provisions of the Mental Health Act, which is to do with Bill 190, and when it would come into effect.

Hon. Mr. Elston: As far as I am concerned, if we knew that we had a specific date in mind when Bill 190 could be read a third time and then proclaimed, we would be a little more sure of the exact date. I had originally put June 1 in the first amendment suggested for Bill 7 because I felt we might

be able to move fairly expeditiously on the hearings but that was not possible, so in this introduction of Bill 68, I moved to make sure there was lots of time, bearing in mind everything that was going on around us. I am very much in the hands of the people here as to making a change in Bill 68. As long as we had dealt with Bill 190, then I suspect we could have forgone even Bill 68, if we had been done with Bill 190 before June 1.

That is not possible now and I am quite willing to move an amendment to whatever date the members here feel is appropriate. I would rather be safe on this occasion, bearing in mind the scathing press release levied against the minister by one of my critics with respect to the reintroduction of this request for extension and I only want to be sure that we do not have to come back and bring another amendment and cause delay, so I am quite prepared to consider any obvious amendments that might be forthcoming.

Mr. Chairman: I guess what I am hearing is that if we have a schedule established which could ensure third reading before we rise, then following that an early date for Bill 68 rather than January 1988 is quite possible.

Hon. Mr. Elston: That is quite correct. The difficulty is always that we do not know exactly when we are going to rise, it being an uncertain date at this stage. Some people do not want to move it until January 1. Any earlier date is acceptable to me as long as we have time to do Bill 190.

Mr. Andrewes: I am still somewhat confused about what is going on. What you are saying is that you will put on Bill 68 whatever date we recommend to you as long as we can guarantee that Bill 190 is done and reported back to the House and given third reading.

Hon. Mr. Elston: That was the point of the extension in the first place.

Mr. Andrewes: All of which depends on the willingness of the House leaders to do that. That may be a bit presumptuous for us to impose that sort of schedule on them at this time.

Hon. Mr. Elston: Although we all know that we should not dictate to the House leaders, I know that the House leader for the government party is quite prepared to move with Bill 190 as it is reported, and if we can have the clause-by-clause done here, in fact, that would be of help in even moving it quicker through the Legislative Assembly where there is a lot of work to be done. There is no question about that. In many cases, I like the idea of having the committee do clause-by-clause in any event because we then can make arrangements where, if necessary, people can participate even on an informal basis in explaining concerns about particular suggested amendments or whatever.

I am not dictating to any of the House leaders but I do know the government House leader has been very co-operative with respect to Bill 190 as well as Bill 68. I know there is a willingness there.

Mr. Andrewes: Let me be clear. I want you to know that we are prepared to move as expeditiously as possible on Bill 190. I have a little concern about the proposal of Ms. Hart because I see on this schedule a number of rather interesting witnesses for whom half an hour would not do them justice. I think we should stay with the schedule we have and perhaps accept Mr. Reville's recommendation of those two days for clause-by-clause. I assure you that we want to proceed expeditiously with the hearings, the clause-by-clause and third reading.

Mr. Chairman: Further discussion? At the moment I have Mr. Reville's motion. It is the only motion I have on the floor at this stage, which is for the dates of June 23 and 25.

Ms. Hart: My proposal that we change the last hearing date to a clause-by-clause date is only made in an attempt to make sure that we get it done before the adjournment of the House. On reflection, that really does not give much time for groups to tell us anything.

Mr. Chairman: Shall we get the amendments out to them?

Ms. Hart: Right. So I am not going to be moving an amendment to Mr. Reville's motion.

Mr. Chairman: Let us take the vote on it and we can discuss how we can facilitate things a little bit.

All those in favour of Mr. Reville's motion?

All those opposed?

Motion agreed to.

Mr. Chairman: The obvious thing, as we have done in the past, is for people to get their amendments out to the various parties and to the interested groups at the earliest possible opportunity so there can be the kind of feedback that will speed up the process on the day of clause-by-clause rather than that causing extra problems and there would now be a two-week period in which to do that.

Mr. Andrewes: The cameras will record that you looked over your left shoulder when you said that, directly at the minister--one of the groups that you are looking for to have their amendments out early.

Mr. Chairman: I would expect the minister's amendments to be out, Mr. Reville's to be out and your own to be out in good order and I expect some of the groups who will be before us will indicate whether or not they would like to be advised of those and to have a chance to talk to us about those matters in an informal way before we come back.

Mr. Reville: Perhaps the minister would care to comment during the course of his remarks on when we might expect to see government amendments, because that will have a fairly serious impact on the amendments that Mr. Andrewes and I might want to move as well.

Mr. Chairman: I am not sure if it is going to be ad libbed or part of the written text. We will find out as we go through.

Hon. Mr. Elston: In fact, I will speak a little bit about some of the suggested house-cleaning type changes. Having spoken to my friend earlier, I will take a look at the form of the amendments that we are concerned with now and I can undertake to give those to my two colleagues and all the members of the committee at this stage, bearing in mind, of course, that we may have to clean them up.

The other thing that happens, as we have found on occasion, is that other suggestions do come our way during the course of presentations. I cannot undertake they are in final form, but in any event I will share very early with my colleagues the suggested changes.

Mr. Chairman: Further discussion on these procedural matters? If not, let us get under way. We are about 10 minutes behind. Thank you very much for your assistance.

Minister, we would ask that you come first to give us an overview of Bill 190 and where you want us to go from here. Then we have the Ontario Association of Professional Social Workers here and one or two of our other deputants. Why do we not move along with your opening statement?

1610

Hon. Mr. Elston: Thank you. I am pleased that you have invited me back. We always have such a great time here in the standing committee on social development. It is nice to see everybody's smiling face. I am somewhat shocked, however, that this committee does not start until four o'clock in the afternoon. The day is almost 90 per cent over.

Mr. Chairman: For some of us perhaps.

Hon. Mr. Elston: It seems to me that we should be moving our starting times up a little, but that is another point. I will leave that in your capable hands, Mr. Chairman.

Mr. Chairman: In fact, we will be flexible and have it at the orders of the day, but this is the earliest that we can be sure we can be here.

Mr. Callahan: If we could eliminate question period.

Mr. Chairman: That is almost to the point of self-destruction anyway. I am sure we can continue on.

Hon. Mr. Elston: I am very pleased that we got Bill 190 here. It was my concern that when the amendments to Bill 7 were made in the House very quickly during the final days of the House before we rose in December, we had not debated specifically some issues that were affected by the amendment. Of course, that was the reason Bill 190 was ultimately introduced, as everyone is aware.

The amendment to Bill 7 I was concerned about was the amendment that removed the authority from the psychiatric review board to order treatment for involuntary psychiatric patients when they have refused consent, or in the case of incompetent involuntary patients when the patient's relative has refused.

It concerned me a great deal and, as a result, everybody knows that Bill 190 was introduced. As a companion to that was a request that the Bill 7 provision be postponed in terms of implementation until after June 1. That date has been a little ambitious but, in all, I have been happy that we put that date in there to make sure the pressure stayed on all of us to work expeditiously with respect to the deliberations on Bill 190.

I can tell you I understand quite clearly that Bill 190 does not meet all of the concerns with respect to questions surrounding the Ontario Mental Health Act. I had considered at one point requesting that Bill 190 be withdrawn in favour of a study group that would examine other aspects of concern that have been raised in the course of discussions and in correspondence that has come to my attention from across the province. Hence, there was a series of short meetings with people who are either providers or

advocacy proponents inside the mental health system currently, as known. I accepted their advice that Bill 190 should proceed and that we talk about a number of the issues that are raised by Bill 190 to get some final determinations before we rise this summer.

Still, I have made the commitment to those people I met and will do so through this committee to the public that we will take some steps to deal with the question of competency soon after we tidy up this particular bill. I am really looking forward to Bill 190 moving forward as quickly as possible after we debate some of the issues.

I should go over some of the points about some of the safeguards that have been put into Bill 190's recommended amendments. These are designed to protect patients' rights, and briefly I will read what is in front of me so that I can move along quickly and not disadvantage the people who are here to make other presentations.

The following procedure currently applies with involuntary patients where their relatives refuse treatment. Three physicians, at least one of whom is a psychiatrist not on staff at the treating hospital, must examine the patient and agree that treatment should proceed. The attending physician then applies to the psychiatric review board for a treatment order. The review board holds a hearing at which the patient has a right to be present and be represented by counsel. The board's decision can be appealed to the courts by either the patient or the physician.

Bill 190 is intended to adapt and improve this mechanism in order to strengthen patients' rights while ensuring the treatment of major psychiatric disabilities. The bill proposes several changes in current practice.

First, during the initial stage of seeking approval for treatment, doctors who examine an involuntary patient will be required to give reasons why they believe a patient will not improve without treatment and why the review board should issue a treatment order.

Second, in granting authority to proceed with treatment, the review board must specify the period of time for which the treatment order is effective. The board may also include terms and conditions under which treatment is to be provided.

Third, during the course of any appeal by a patient or relative regarding the board's decision, treatment will not proceed unless a judge of the court rules otherwise.

The issue of electroconvulsive therapy must also be debated. In the current bill, ECT is excluded from review board authority. The consent of an involuntary patient or their representative will, under the terms of the bill, be required for ECT to be given.

Representations to me from various people, from advocates of patient rights and from providers of care, have made me understand that the removal of this section from the bill might be more consistent with respect to all treatment modalities being covered by the provisions. In other words, I am quite willing to consider whether this section ought to be eliminated as part of Bill 190.

In addition, under the bill all patients will be advised of their right to designate a representative to give consent to treatment should they become

incompetent. The measure also removes legal uncertainties in treating voluntary and informal psychiatric patients and those on Lieutenant Governor's warrants.

Since Bill 190 was introduced, a number of newspaper articles have been published on the subject and numerous groups have made representations to the ministry. It appears there is some confusion over the intent and the effects of the proposed legislation.

As a result of that, during clause-by-clause review and as early as we have some final form to our amendments, these will be circulated to my colleagues, as I undertook earlier. I will be bringing forward a number of motions to amend Bill 190. The following are some of the motions in content.

We will add two further safeguards to those already in the bill

regarding treatment orders by a review board. The doctor seeking an order must show that the benefits of the proposed treatment outweigh the risks. The doctor must also demonstrate that the proposed treatment is the least restrictive and intrusive in the circumstances. These safeguards were recommended by a committee of the Uniform Law Conference of Canada in its Model Mental Health Act.

We will make it clear that former patients and outpatients cannot be treated without consent. That caused a great deal of concern.

Another amendment: Patients, even though not mentally competent, will have the right to ask the review board to appoint a specified person to represent them in making treatment decisions.

Under the bill as currently drafted, in psychiatric emergencies, hospital staff is permitted to proceed with treatment and take whatever actions are required to stabilize a patient. Through an amendment, we will add safeguards to the provision of emergency psychiatric care.

Further amendments will ensure that a mentally incompetent patient will be a party, as of right, to proceedings before the review board and that an incompetent patient will always be represented before the board.

Voluntary patients found to be incompetent to consent to treatment will have the right to challenge this finding by appeal to the review board. This right is currently available only to involuntary patients.

Persons held in hospital under the criminal process will be susceptible to treatment orders only if they meet the criteria to become involuntary patients.

Finally, we will clarify a number of terms in the legislation, such as "informal patient" and "related medical treatment."

I think these measures will establish an even more sensitive balance between the civil liberties of patients and the responsibilities of physicians to determine and prescribe treatment. The motions address the key issues raised concerning Bill 190, and I therefore anticipate a strong consensus on these directions and positive consideration of the amendments proposed to the bill by the members of this committee.

To make one final point, we have the responsibility to move forward quickly with this legislation so that our psychiatrically disabled patients

may continue to receive the help they urgently need. While I request a speedy movement, I do want us to consider very seriously the issues that are raised by the people who present this material and take a look at some of the issues we must deal with.

In addition to that, my desire to deal with the question of remains very high indeed and I am looking for advice as we move closer to setting in place deliberations on that extremely important question for full treatments.

By the way, I can perhaps photocopy the bullet points out of this for my friends on the committee and they can have these right now to give them an idea of the content.

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Mr. Chairman: I will hand it to the clerk of the committee who will be glad to get us copies for ourselves and perhaps enough for a certain number of people in the audience as well who would appreciate it. Those are substantial amendments and I am sure will elicit some good response.

Mr. Reville: I have a brief comment and a question to the minister if he will entertain one. This is clearly a case where dithering has produced a good result. I agree with the minister's comment that if the amendments he is going to introduce are as he says they are, and I have no reason to doubt that they are, the bill will indeed strike a much more sensitive balance than when it was first introduced. I do not believe there is yet consensus on whether the balance is sensitive enough and that is what I think we will talk about.

I have a question to the minister. It relates to what I see as the central theme of Bill 190, and that is the question of competent override, if I may use that jargon. I have never seen any accurate information on the number of treatment orders applied for and granted in respect of involuntary competent patients or involuntary incompetent patients whose substitute decision-maker is sought to be overturned.

Unless we have that information, it strikes me that our efforts here will be somewhat blind. We have attempted to collect this information, but regrettably the information is not kept in a way that it is easy to differentiate one from another application before review boards. In fact, there is some indication in at least the raw data I have seen that the results may be somewhat skewed by one or two review boards that seem to be behaving in a way that is not consistent with others. Will you be tabling such numbers or will you go with my numbers?

Hon. Mr. Elston: I had not thought of the question of tabling more statistics. I will try to provide what material I have. There were a number of questions answered in Orders and Notices but perhaps they did not provide the differentiation you are looking for. If I can provide further breakdowns, I will.

Mr. Reville: Maybe I could be really specific so that--

Hon. Mr. Elston: As a very last resort, I might consider using your statistics.

Mr. Reville: I would be willing to release mine today.

Mr. Chairman: Why do you not do two things? If you wish to release yours today, you may, but why not ask specifically for the breakdowns you want so we have that on the record?

Mr. Reville: Would the minister provide the following data, totalled and broken down by each schedule 1 psychiatric facility, for a period of at least 12 out of the last 36 months: the number of applications by a physician under section 35 of the Mental Health Act to the review board for an order authorizing the providing of psychiatric treatment to involuntary patients. If possible, the data should distinguish among three cases: where the application is to override the refusal of a competent patient, where the application is to override the refusal of the nearest relative of an incompetent patient, or where there is no nearest relative. These are the three cases. I think that information would be very useful to us all.

Hon. Mr. Elston: I will undertake to provide what data I have.

Mr. Chairman: Are there further questions of the minister? Thank you very much. I have no idea how long you are going to be able to be with us.

Hon. Mr. Elston: I will stay a little bit longer.

Mr. Chairman: That is great. For as long as you are able, we will be pleased to have you.

Hon. Mr. Elston: I am missing some very important debates in the House, but this is first.

Mr. Chairman: We all are, I am afraid. Our first deputants this afternoon are from the Ontario Association of Professional Social Workers. Mr. Lurie, would you like to come forward? It is nice to see you. You have been before a committee before, so you know how all this works.

Hon. Mr. Elston: These are all first-time presenters.

Mr. Chairman: Some are of them first-time presenters, but others are well-paid professionals in this field. We are going to try to provide about half an hour's leeway for discussion and presentation, but we have decided essentially, as you heard earlier, that we will allow you to take as much of that time as you wish in terms of presenting, and then I will try to divide up the time as equally as possible among the members for questioning. Proceed any way you like.

ONTARIO ASSOCIATION OF PROFESSIONAL SOCIAL WORKERS

Mr. Lurie: Thank you very much, Mr. Chairman. As members and the minister have copies of the statement, I will read the most important part of it and I will delete stuff that is not really necessary for the deliberations.

On the first page, there is a description of what the Ontario Association of Professional Workers is. I would like to summarize that for the record. We are a professional association of social workers, and as members of this House know, the association is currently interested in getting legislation passed to recognize social work as a self-governing profession.

As of April 1987, there were approximately 3,900 members of OAPSW across the province, 3,200 of whom are in active practice and 300 of whom are students in recognized programs leading to a bachelor of social work, a

master's degree or a doctorate. I think it should also be noted that well over a third of the membership works in health-care-related facilities, whether that be in community-based programs or in hospitals themselves. So we come at this issue from a degree of knowledge, having consulted with colleagues working in psychiatric hospitals and community programs and general hospital psychiatric units.

I took some notes on the minister's statements and, where appropriate, I will try to adjust my comments. If I have missed some things, I am sure the committee will understand.

Social work has an ethical commitment to individual choice. Where possible, we try to help people make informed choices in the context of a therapeutic relationship. It is for this reason that OAPSW cannot support the passage of Bill 190 in its present form. Our association supported the recommendation of the Electro-convulsive Therapy Review Committee with regard to consent to treatment, and we indicated our support of Bill 7 prior to its passage last year.

I might add, in relation to that, we did endorse the provisions of the Clark report with regard to substitute consent, and we are happy to see that some of the amendments, both those the minister mentioned today that he might table and also the deletion of the estranged-wife principle in the bill before us, are a step towards the provisions of the Clark committee report. We would suggest that it would be useful to use that as a benchmark for any standards you may wish to set on substitute decision-making with regard to consent, because we felt that report was in fact a landmark report on consent. We are happy the minister did commission that report and that he did release it.

Essentially, this bill raises the issue that I think is appropriately debated in a Legislature: choices about the protection of society versus individual liberty and freedom of choice as opposed to best interest. As members of this committee well know, consensus is not always easy to reach on these matters, although it is our fervent hope that this committee will be able to reach a consensus that strikes a reasonable balance.

We feel that the bill before us addresses these issues in a regressive way. Our association has always supported a physician's obligation to administer treatment in life-threatening situations. We suggest that the medical emergency definition utilized in relation to other forms of medical treatment can be applied here. As well, we await with interest the minister's amendments to the safeguards with regard to the administration of emergency treatment. We feel that safeguards are useful. Some of the provisions contained in Bill 7 with regard to at least the recording of restraint procedures and those kinds of matters are a step forward. We would like to see what the minister will table to further protect patients' rights.

Essentially we feel that, were the minister to table nothing, the general principles of medical care that allow for physicians to treat in life-threatening situations could be applied here without recourse to some of the things in Bill 190.

We also recognize that restraint may have to be used to protect the life of a patient or others. We see this as a fact of life. Again, we think the law around restraint that was passed with regard to Bill 7 addresses those issues. The minister's proposed comments with regard to further safeguards will be welcomed, but we cannot support removing the absolute right to refuse treatment from a competent individual or a substitute consent-giver as defined in the legislation.

1630

There is clinical evidence--and I believe that in the course of the hearings before this committee, this will be presented--that compliance with treatment plans depends on support and understanding as opposed to coercion. We would go back to my previous remarks that in a life-threatening emergency, there already exists in common law and in common medical practice authority and ability to administer treatment.

As members of this committee know, the advocacy system that has been envisaged by both this government and the previous administration is only partially in place. Only the provincial psychiatric hospitals have advocates in place who would be able to readily assist patients if this law were passed as it is currently drafted. The rights adviser in general hospitals does not function as an advocate, so in another part of a system where there is significant traffic, there is a lack of an available safeguard.

As members know, the patient advocate program is currently under review. Our association is hopeful that it will be continued and expanded. We have endorsed it from the beginning and congratulate the minister on his support for the program. Our concern is how this legislation, if it is passed in its present form, may affect the advocate's role.

According to reports--and these are reports that we got from the patient advocate annual reports--a significant percentage of the advocates' cases in the psychiatric hospitals deal with therapeutic advocacy as opposed to legal advocacy. Our fear here is that passage of the bill in this form could well shift the program focus to an adversarial system. This, we believe, would cause further difficulties for patients and the professional staff in the hospitals.

As well, the Attorney General (Mr. Scott) is developing guardianship legislation to present to the House and, as the minister noted with regard to the next steps on competency, we believe that has major implications. Along with that is the O'Sullivan commission, which is dealing with the question of how one builds in an advocacy situation for guardianship, whether it be partial or complete. It is our view that it would be premature to pass this bill without some deliberation on what kind of safeguards are going to be available to people in respect of their competency.

Without an advocacy system in place for all mental health facilities and clarification on how degrees of competency, as defined in the guardianship legislation, will apply to the treatment system, we believe it is premature and inappropriate to remove the fundamental right of security of the person for persons who are not in imminent danger of serious harm to themselves or others. We have quite deliberately taken that phrase from the legislation.

With regard to the limitation of rights of refusal for persons on the Lieutenant Governor's warrants, we certainly are quite interested in the amendments the minister has spoken of today. We think the issue here is the state's obligation to treat somebody who is not guilty by reason of insanity but competent to refuse treatment. Certainly, if the minister is able to develop amendments that this committee approves that would simply allow for treatment only in cases where dangerousness, as defined in the legislation, was the issue, we think that might well be appropriate. Again, however, it is the general medical ethics that already exist in life-threatening situations. It may not be necessary to have these sections in it at all.

By ordering treatment with a Lieutenant Governor's warrant, the state should be able to exercise its will if treatment under a Lieutenant Governor's warrant is held to be a reasonable infringement on individual liberty under the Charter of Rights. I think this is the question. Whichever way this committee goes, and certainly if it passes the legislation, it is quite likely that there will be a charter challenge. It will then be up to the courts. We have been trying to get group homes approved by the Ontario Municipal Board. It can take five to seven years. We would submit that legal challenges are not the way to write laws when that is essentially a Legislature's right.

We would urge this committee to deliberate on what the effects of an approach to treating people on LGWs might be, simply because we think consideration needs to be given to the development of a mechanism that would determine whether a competent refusal in a non-life-threatening situation perhaps signifies that no further treatment is needed and that the person should be returned to the courts for retrial and sentencing in the criminal justice system.

I think that is a very important issue to begin to consider, because it may well be that if the person is no longer dangerous, we should consider how to get the person to face the music under the criminal law. As we know, with the insanity defence, we have a situation in Ontario and across Canada where an open-ended Lieutenant Governor's warrant may restrict a person's freedom more than if he had been convicted of the crime in the first place. I think this is an opportunity for this committee and the Legislature to be innovative.

A year ago, when Bill 7 was before the Legislature, I was appearing on behalf of another organization at the uniform mental health law conference. I was quite proud to be able to say that Ontario was leading the way in the development of mental health legislation. It is certainly our association's hope that in the amendments that will be considered to Bill 190, Ontario will still be a leader. We would not want Ontario to follow the paths of other provinces. Ontario has historically led the way and we would like to see that continue. The current status of Bill 190 leads us to believe we are beginning to fall back. The removal of the clause with regard to electroconvulsive therapy may potentially indicate a further weakening, and we would not want to see that happen.

Aside from the language with regard to compulsory treatment and the competent override, we are talking about rights restrictions rather than rights entitlements. I think that is almost a more fundamental issue that this Legislature needs to debate. If you look at the history of mental health law in this province, we have dealt primarily with how treatment might be administered in institutional care settings. The minister spoke to a group of mental health professionals a few weeks ago and acknowledged that 90 per cent are out within a month and most stay less than two weeks. So the tip of the iceberg is in the institutions. It is really what is happening in the community that is the issue. That is where our association would suggest, as we understand others will, that rather than removing rights granted in Bill 7, this bill, or an amended bill, should be encouraging and enunciating the rights to quality mental health care in institutions and in the community.

A balanced, accessible mental health system should be in place in Ontario. We agree that there have been some very good developments over the past 10 years in this province, but I think they are program-related rather than system-related. This committee had before it in December examples of some landmark programs that were doing well across the province.

I think we are in a fortunate situation when we look at community mental health care in Ontario. Rather than having, as we have with the nursing home situation, a collection of services that need to be cleaned up, we have a very firm foundation on which we can build. We have a foundation of programs, some 360, I believe, that are actually more scrutinized than other areas of health care. Every program has objectives set. These are reviewed by the ministry during the program's first two years in terms of patient objectives or client objectives, as well as the program objectives. For the most part, the ministry has not had to close down any of these programs, or very few of them, in the 10 years they have been established. I think the track record is there. What we need to do is build on that.

Unfortunately, the government commitment to a balanced mental health service system has not yet materialized, especially when you look at the allocation of dollars. Ontario spends 10 per cent of its budget on mental health. These statistics, for the committee's interest, are taken from the document entitled Excerpts from a Regional Allocation of Estimated Expenditures on Mental Services by the Ministry of Health, Fiscal Years 1982-83, 1983-84, 1984-85, published by the Ministry of Health in December 1986. We acknowledge that while, in looking at 1986-87 and 1987-88 expenditures, there might have been some changes from 1984-85, these are the most recent statistics available and we based our estimates on those figures.

Ontario spends 10 per cent of its health budget on mental health; 94 per cent is spent on hospital or medical inpatient services. While there has been a doubling of spending in community mental health over the past three years, a jump from three per cent to six per cent does not mean much when you have very little to start with. Put in the context of the overall health budget, going from 0.2 per cent of what is now an \$11.5-billion budget to 0.5 per cent over the past five years, does little to create a balanced system when we know and the minister knows that mental health problems occur and, for the most part, remain in the community.

While we were somewhat encouraged by remarks in the throne speech that said the government was going to do some things with regard to the mental health care system, there was nothing in the budget, with the exception of a reference to improved mental health services in northern Ontario. We would agree there is a need there.

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The ministry's own Heseltine report documents holding back institutional expenditures to less than inflation from 1977 to 1981 to finance the growth of community programs. As members will know, for the most part, this occurred from the closure of psychiatric institutions during the 1970s. However, taking from Peter to pay Paul makes co-operation between community programs and hospitals difficult when the hospitals are unable to keep pace with costs and are asked to provide backup to community-based programs. You have an inherent competition in the system.

You also have a situation with regard to general hospital psychiatric services where, in the hospital's own global budget, psychiatry is never seen as a high priority. For the most part, the development of hospital-based community mental health programs that we have seen has been very important to the community mental health programs, because they are unable to get that priority through the global hospital budgets. When those expenditures are restrained or when those programs have to compete for funds with community programs, it becomes very difficult, except in an isolated case, to build the

kind of systems co-operation that the reports that have been done over the past 10 years suggest need to be developed.

Mental health expenditures account for only 10 per cent of the health budget. We believe this is too low a figure when one considers some of the statistics that have been available for years, that one in three Canadians will suffer from serious depression and one in eight Canadians will require psychiatric help at one time or another. Further, when one looks at the kind of investment that could be made in the mental health care system, it is not, in general, a bricks-and-mortar type of investment and it is not a high-technology investment. It is a people investment. We find it difficult to justify such a low percentage of spending on mental health relative to other types of health care.

I might add that our colleagues in other generations and other jurisdictions have found the same thing. In a report developed by the Canadian Mental Health Association in 1963 called *More for the Mind*, which was a blueprint for the development of mental health care in this country--it was quoted by Mr. Grossman when he was Minister of Health in his announcement of mental health reforms--there was a quotation that said something to the effect, "No other affliction except leprosy has been subject to so much neglect."

It is very easy for us to sit here and say, "Community mental health expenditures have doubled over the last five years; aren't we doing well?" I think this committee needs to consider how to build a better mental health system in this province and how to make it a priority.

When you look at the distribution of services across the province, while there have been some gains over the last 10 years, when you look at community mental health services, you can see that there is a very uneven distribution. If you try to apply the framework of either the Heseltine essential services components or the components-of-care system developed by the Metropolitan Toronto District Health Council or the mental health planning framework developed by the Ontario district health councils' executive directors to every region and every municipality in the province, I think you would find that the basic services they suggest should be in place are not in place.

Even here in Metro Toronto, when one looks at these statistics and separates out children's services and grants to provincial organizations, you have \$4 million being spent in the city of Toronto and \$695,000 in Etobicoke. It is very hard to justify that on a rational basis.

We would argue that it is time now. We have the technology in terms of the ideas and the frameworks to begin to build a mental health care system. There is agreement on principles for a balanced system, and a number of frameworks that I mentioned exist to guide the implementation, ranging from the essential services concept of Heseltine, which the government has had before it now for four years, to the components of care recently published by the Metropolitan Toronto District Health Council.

I believe if this committee could recommend that we get on with implementing a balanced mental health care system that truly recognizes that people who have mental health problems have them in the community, may need short institutional stays but need a range of community supports, that is the way ahead.

Countless reports have been done in the last 10 years but the will to

implement these needed reforms has been lacking, so here we are debating forced treatment when many people do not have access to the services we know would reduce or eliminate the crisis.

We are doing this without legislative agreement on what competency means, knowing that this whole matter is under review by the Attorney General (Mr. Scott) and will now be under review by the minister following the passage of this legislation.

OAPSW would prefer that the Legislature debate a vision of the mental health care system and pass legislation guaranteeing the right to a comprehensive, flexible, accessible system of mental health care. We say this knowing that, with the exception of Bill 7, which has brought mental health legislation to our attention twice in the last year, in general, mental health law tends to come up every eight to 11 years. We do not want to miss the opportunity and we would not want this committee or this Legislature to miss the opportunity to use its power of law and its power to recommend funding to create a landmark mental health care system. We would prefer to see the Legislature move forward rather than backward.

Mr. Chairman: Thank you, Mr. Lurie. How many members have had access to the Clark committee report? Would you like me to ask the parliamentary assistant to get us copies of that?

Mr. Andrewes: I have one.

Mr. Chairman: He could perhaps get us nine or so. Are there any questions for Mr. Lurie?

Mr. Andrewes: On the first page of your presentation, near the bottom, the second-last paragraph, you say, "Passage of this legislation could well shift the program focus to an adversarial system causing further difficulties for patients and professional staff." I wonder if you could explain that.

Mr. Lurie: I note from the agenda that Mr. Giuffrida will be making the presentation so if I get anything wrong I am sure he will correct it. As I understand the way the patient advocate program operates, for the most part, a nonadversarial system exists. When somebody has a problem with treatment, whether he agrees with a discharge decision of the social worker or he has some questions about his medication, if he is unable to work it out with the attending physician or psychiatrist, he will call in the advocate who will often investigate and tend to mediate the dispute informally.

Where we are talking about a fundamental right of a competent person, for example, to refuse treatment, if I were in that situation and I knew I was not dangerous, I would get to the advocate as quickly as I could and I would say: "Do everything you can"--including using what the minister has announced as amendments--"If necessary, get me to court. Get me the review board. Get me there quickly." I think that tends to build on an adversarial system where the medical profession--and you will hear people who follow me say there is already too much state intrusion in what are essentially medical decisions. It leads to a situation, and we have seen some evidence of this, where they might say, "Fine, while five minutes ago we decided you needed treatment, we will now discharge you; you are out," with not necessarily any support services in the community. Basically, the person gets told that he is an unco-operative patient and not amenable to treatment. If the will is frustrated, then everybody loses.

My sense is that the patient advocate program as it currently exists and under the existing framework tends not to have to rely on the legal stick, bringing in legal help to safeguard rights; in fact, that is a minority of the cases.

I think this question of competent consent to treatment would make it much more of a contentious issue, where people would say, "I have side-effects from this medication. I really do not want to take it," or, "I think I am being given too much." The doctor says, "I am simply going to go to the review board and override your consent," or he will try to. It just creates a situation that I think we would want to avoid, especially since the clinical evidence will demonstrate when it is tabled that compliance is much more likely when people fully understand the effects of the medication and feel they can negotiate and come back to the doctor if there are problems.

Like any of us here, if we are told we have to do something, even if we are told it is for our own good we tend to bridle at that and perhaps will use whatever we can to frustrate what may be a good therapeutic intent. So we feel that the advocate system in place should not be put in a position where it becomes more adversarial than it already is.

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Mr. Andrewes: Are you suggesting that physicians might use the threat of a review board referral as a coercive means of asking or requiring patients to take treatment?

Mr. Lurie: That is always a possibility. Certainly, in some of the work I have done over the years I have heard stories where people have been certified because they have refused to consent to medication and treatment. It is hard to tell. Perhaps the information Mr. Reville asked for will shed some light on the extent to which it is a problem.

We are back to the goals of the mental health care system. Our goal should be to encourage co-operation between the health care professional and the client on as equal a basis as possible. Most patients will want to work co-operatively with a doctor and will want to hear what the doctor recommends, but they will also want a chance to say, "No, I do not want that." Especially if there is not a threat to life or limb, I think we run the risk of trampling on people's rights in a way we would not do if you had cancer, a heart condition or ulcers.

Mr. Reville: Thank you for your presentation. The most common criticism I have heard of the notion that people should have the absolute right to consent or refuse is that if we allow that right, the hospitals will immediately or very quickly become clogged with untreatable psychotic folk. I expect we will hear stories of this during the hearings. Would you comment on that concern? Is it a real concern?

Mr. Lurie: I am not sure it is real. I think we should look at the current situation. We have people who on occasion refuse treatment. I think the Coalition on Psychiatric Services did a survey on refusal of treatment some years ago. Rather than the hospitals becoming clogged, in fact some people were certified and were then treated. Others were discharged, sometimes against medical advice. Others, if they were voluntary, tended to leave themselves.

I do not think the hospitals would be clogged. I think you do run a risk

that there may be the labelling of patients as unco-operatives. Rather than being clogged, the opposite effect might occur where people would say, "We are just going to discharge." If one looks at how the medical profession has utilized the existing legislation, sometimes when people are dangerous to themselves or others the treatment one doctor will recommend is not given.

We had a tremendous example of that at the Drina Joubert inquest, where I testified. A physician in the community, and the patient was co-operative in this instance, brought her to the hospital and said, "This woman needs at least to be examined for the period allowed under law and then stabilized." Her track record showed that, given a few days in hospital, she tended to get stabilized. The attending physician did not accept her because, while one doctor said, "We thought she was suicidal," the other one said it was suicidal ideation and discharged.

The law is a blunt instrument. No matter what the law is, doctors will be asked to make judgement calls, as will other allied health professionals. It is a bit like scare tactics to say that if you remove the right of a review board to override competent consents or the consents of involuntary patients, the hospitals will become clogged. The test there is what the law currently is: Are people still dangerous to themselves or others and in danger of imminent harm to themselves or others? That is where I fall back to the remarks we made in our submission. If that test can be fulfilled, you have under medical ethics and common law an ability to treat and, under Bill 7, an ability to restrain.

I would say those kinds of stories will not pan out.

Mr. Reville: You have touched on the other side of that coin: Will the absolute right to consent create a group of people for whom there is not going to be treatment because they will never be accepted into a hospital? In other words, someone is brought to emergency or admitting, they are known to be a refuser and, therefore, they are not admitted, notwithstanding that there may be evidence to show they are a danger to themselves or to others.

Mr. Lurie: That is a hard one to predict, but there are elements of that already in the system. There are people, known to be difficult, who are blacklisted in terms of admissions to psychiatric hospitals. Certainly, general hospital psych units have been known to turn away people perceived as difficult. Again, that happens where the judgement is whether they require treatment or not. When the beds are full, it becomes an even easier decision.

Mr. Reville: People are blacklisted even if it is possible to force treatment under the way it works currently?

Mr. Lurie: That is my understanding, from anecdotal evidence I have heard over the years.

Ms. Hart: My understanding is that with certain diseases such as schizophrenia and types of depression, the symptoms manifest themselves by the patient refusing to accept treatment. I am not a doctor and certainly not a psychiatrist, so I do not know much about this, but if that is the case, the very disease we hope to treat makes the patient say no to treatment. How would you handle that under your proposed scheme?

Mr. Lurie: In passing Bill 7, the Legislature set forth a way to do that. It says that if life or limb is at issue, you can use restraint to treat. What is defined as restraint in law is essentially a chemical restraint for the most part, and in fact is medication.

If that is the restraint that might be used, if somebody was given Haldol or Chlorpromazine to the clinical dosage required to stabilize them, it might well be that after the three-day period they would be calm enough to voluntarily submit to treatment.

I would argue that it is easy to say certain symptoms of a disease make people refuse treatment, but I do not know that that is borne out in the clinical literature. There is also clinical literature that suggests that one third of the people who have schizophrenia will get better with no intervention at all.

The difficulty is what evidence you look at. The clinical evidence suggests that the treatment plans that work best, especially for people with a long-term psychiatric disorder, are those developed where the patient feels he or she has some power and influence and can bring his or her problems to the physician, and where there is support for the carrying out of the treatment, whether that be through a referral to support programs in the community or more readily available information on medication.

For example, over the years there have been a number of group approaches to answering patients' questions about medication that have been very successful and have led to compliance. I would propose that the test for whether one treats against one's will is essentially the dangerousness test, which has been well defined by this Legislature since 1978, and that in other instances, we not fall back on a coercive model.

1700

Ironically, the same kind of questions were tabled in 1978 when the previous administration introduced an act amending the Mental Health Act, which did move in the direction of safeguarding patients' rights in a number of areas, as you well know. The prediction was that it was going to be impossible to get anybody committed to psychiatric treatment. In fact, the data show that the commitment orders went up. They were higher in 1981 than they were in 1977, one year before the 1978 act was amended. I think it is a tough one to call, but I guess my sense is the less coercion the better, except in the case of a medical emergency.

Mr. Chairman: I must commend the committee on breaking its normal traditions and sticking within the time limits on the first presenter. This is really quite remarkable. That is great.

Thank you very much, Mr. Lurie, for coming before us. We appreciate it.

Our next two presenters, Dr. Galbraith from St. Thomas Psychiatric Hospital and Dr. Draper from Brockville Psychiatric Hospital have decided to make things even easier for us and are going to present at the same time. Would you gentlemen like to come forward and take a couple of seats in front of me? Your brief has just been circulated to the members.

First, let me say how much we appreciate your being able to come on the first day of hearings and on very short notice. We were given your names by the ministry at the last minute last week. I am glad you were able to make the time to come down and travel to see us. You can present your information any way you would like, and I will open it up for questions following that.

DRS. RONALD DRAPER AND DON GALBRAITH

Dr. Draper: Thank you very much indeed, Mr. Chairman, for this opportunity, though we have arrived a little breathless. We have had about a day to try to put something together. Indeed, we think it is significant that not much of the clinical evidence has been put out to date. A lot of the theory and a lot of principle have been talked about, but very little of the real, hard clinical data have come out. We believe that tells a very important story, and what we are presenting today is just a scratching of the surface.

We want to address specifically and were asked to address specifically the question of treatment orders, rather than the whole of the bill. We believe they are essential in facilities that treat the severe, psychotic mental disorders. Indeed, our provincial hospitals handle just those sorts of patients, the difficult patients who have been sent by other facilities.

Untreated, these disorders are associated with severe disability, illness and suffering. They are associated with a significant increase in mortality. People die from manic-depressive disorders. Schizophrenics mutilate themselves. They kill others. These are not minor mental illnesses such as you might find in the community.

Certainly, they have a serious impact on the environment. The thought of having patients who could not be treated confined to our hospitals is a horrifying one, both for the patient and for the effect it would have on morale of nurses and doctors asked to confine a patient and keep their hands off and not treat him, knowing the patient required treatment.

The number of these orders is very small. We are aware that it was probably less than 100 for the whole province for 1986. In my own hospital, there were eight applications, seven orders and one on appeal. They are very small numbers. Play has been made of the fact that because the numbers are small, the legislation is not required.

I think there is a totally contrary point of view that they are being used carefully. They are used only in exceptional circumstances. Indeed, it is exceptional circumstances that we are talking about. If they are abolished completely, somewhere down the line there will be patients who will die. There will be inquests. It may be only one, it may be only two. We do not accept that even one is acceptable. We really do believe that rights have to be balanced against suffering, disability, injury and, indeed, death.

Why do we require treatment orders? There is a lot said about getting permission from the family or getting permission in various ways, and we do that in the majority of cases, but we are frequently faced with situations where there is no family member available or where the available family member is ill or infirm or where families want treatment and are too scared to authorize it.

You might think that is an exception. That is quite a common finding--a paranoid schizophrenic or other patient who threatens the family: "If you give a treatment order, I will get you. I will come and murder you." That is not uncommon. And, of course, there are families who would be quite happy to see their black sheep put away. In these exceptional cases, there is only one way to ensure that the person gets treatment, that is, with a treatment order or something of that sort.

I have presented just four brief clinical vignettes which I hope will illustrate some of the points I am making.

If you look at the first clinical vignette--this is real life; these are cases from our records--Mrs. M, a 43-year-old lady, an attractive physiotherapist in fact, was admitted from a residence. She was a chronic schizophrenic. She had been lapsing for two years because of failure to take her medication. In that two years, she had lost her husband, her children, her home. She was incarcerated in hospital. She was deteriorating into a chronic psychotic state. The future for her was the inside of a hospital for years, for the rest of her life.

She was one on whom we obtained a treatment order. She has attained a full remission. She is now living and working in the community. She is attempting to rebuild her life. Indeed, she is currently on vacation. She attends, quite happily, as an outpatient. She comes to see her doctor and has a normal doctor-patient relationship. She is a purely voluntary patient, but she would never have achieved that without that treatment order.

Case C shows what I mean about the threats. Here is a lad of 30 who has spent eight years in hospital without any change in his delusional system because he has not had treatment. He is a good example of a threat situation. He has parents in Manitoba who plead: "Please do something about our son. Please treat him. Please give him a chance to recover. Please give him a chance to get back in the community, but do not ask us, we are too scared." They have been to lawyers in Manitoba and the lawyers said, "I really think you should not do it, because I think your lives are at risk if you do it and he ever got near you."

These are the sorts of scenarios we are faced with. I have given you another scenario there of a lady who is the survivor of a suicide pact, a very severely depressed lady. She came to us extremely futile, suicidal, wanting to die. We got a treatment order which, curiously, was limited to a month. In that month, she began to improve, go to activities, start to take a different perspective. The order ran out. She is relapsing. She is a serious suicidal risk. She will probably kill herself unless we can succeed in getting another treatment order.

The final little vignette I have given you there was a famous case in our hospital some years ago of a gentleman who came in with a severe depression and, for operational reasons, was not properly treated. He did not get electroconvulsive therapy. He refused food and fluids on a delusional basis, became severely depressed and severely dehydrated, developed pneumonia and was transferred to a physical medicine facility and died. The inquest jury found, in essence, that he died unnecessarily because ECT was not available and, indeed, ECT is a life-saving procedure in many cases.

These are the sorts of thoughts we have and what we have put together in a very short space of time, but if they are not convincing enough, I believe that if there was some more adequate, more detailed research through the various hospitals of the sorts of people who are being treated in these situations with treatment orders, the facts would speak for themselves. They are only a few cases from one hospital. I think the story overall would tell itself and would compel you.

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Dr. Galbraith: What I would like to do is just make a few general comments and then review the situation at St. Thomas Psychiatric Hospital, tell you a few of the statistics that you were looking for before and then just summarize my feelings about Bill 190.

I must admit that working in a psychiatric hospital, there are times when you feel like Alice in Wonderland. You see the reality of your hospital and then you hear the statements made by patients' rights groups and advocates and you have trouble putting the two realities together.

I thought I would mention what I think are four myths about our hospitals. The first is that the real enemy of patients is the family, the nurses, the physicians.

As Dr. Draper has pointed out, we work with the most dangerous, the most disturbed patients in this province. The most common illness is schizophrenia. Bleuler, when he coined the word "schizophrenia" might have been better to have left it as it had been earlier named by Kraepelin, and that was dementia praecox. Schizophrenia is a terrible illness. A colleague a few minutes ago mentioned that a third of schizophrenics get better without any treatment at all. If one applied a true Diagnostic and Statistical Manual 3 criteria diagnosis to that sort of statement, my guess is that there would be very few schizophrenics who would get better with no treatment at all.

Certainly, the changes in the legislation in the past few years have put us at odds with our patients, with the families of our patients, and have had a major impact on the morale in the hospitals. I have had families berate me because their patient was not being treated after we had gone to a review board. I have had families berate me because, even though they sat through a review board, they did not understand that the review board was not part of the hospital, and thus we had let the person back into the community to get into further difficulty.

The aggression towards direct-care nursing staff is significant. The union has taken a stance and is actively encouraging the staff, as I understand it, to charge patients for aggression. Currently in our hospital, we have two such charges before the court. In another case, a patient is charging another patient with aggression. You should know that it is not simply the staff in hospitals who are aggressed, it is very significantly--and I think even more frequently in terms of the small percentage--other patients who are aggressed by an aggressive patient who is not being treated or being treated inadequately.

In terms of the impact on medical staff, there is this adversarial relationship that you heard about a short time ago. The doctor going to a review board must indeed go into a situation where he is sort of crown attorney, lawyer and expert witness. It puts him in a really untenable position. He has to bring forth the most negative details about his patient in order to convince the board that this is the appropriate method, whether it is maintaining a certificate or in terms of the treatment ordered.

The frustration has reached the point, from a medical point of view, that a motion was put at the meeting of the Ontario Psychiatric Association in January that the exploration of a judicial model such as the one that occurs in a good many states in the United States should be seriously considered in this province. So there is a lot of tension in the hospitals at the present time. I think we have to look at not increasing these tensions further.

The second myth is that civil rights exceed the right to treatment. In the United States, there is a good deal of literature on the right to treatment. In Canada, to my knowledge, there is no significant legal precedent in the area of right to treatment. There is the question that was raised by a member as to the extent to which a delusional person is really free to make choices.

The third myth is that medication is worse than no treatment at all. Indeed, our medications are not curative. Would that they were. I never did work in the preneuroleptic era and one has to talk to staff who did work in that era. In those days it was not merely assault; it was not infrequent that in hospitals, staff were killed by patients. So medication has made a tremendous impact. There are severe side-effects. There is no question of those and they can be tragic when they occur.

The fourth myth, if you will, is that competency can be reduced to a black-white determination that can be very easily made, perhaps in the admitting ward if someone is admitted strapped to a stretcher with a couple of policemen on either side.

We have been struggling with the definition of competency since Bill 7. There is still great debate in the psychiatric community in this regard and there is no legal precedent at this point in terms of what the real test for competency is. I am reminded of Barry Swadron's comment one time when we tried to push him, back in 1967, on what criteria we ought to be using in this area of competency. His comment was, "Of all the incompetents to determine competency, the doctor is the most competent." It is a lousy job at best.

Let me just give a bit of background in terms of St. Thomas Psychiatric Hospital. It is a busy hospital, probably average-sized in the province in terms of 1,400 admissions a year, 400 beds and a tremendous commitment to outpatient care. From the period of July 1984 to the present, we had a total of 12 treatment applications. We got 11 treatment orders. So we are averaging about four treatment applications per year.

I was mentioning this issue the other day when we spoke to the minister, that I wished I could have brought some of the patients who had gone through this experience to meet him and again today to meet you people. In some cases the stories were quite dramatic and not unlike the ones Dr. Draper related.

I know there will be questions about the issue of whether these people were really competent or whether a relative was not available. I will just take 1968 and review those cases.

The first case was a lady, 49 years old, who had 13 admissions to psychiatric hospitals in the last few years. Typically, she would go into hospital, refuse to talk to anybody and then end up in a relatively short time--occasionally she would take a bit of antipsychotic medication and then discharge herself. On a previous admission to the one I am talking about right now, she refused to talk to any of the doctors at our hospital, applied to the review board and was released back to her home in Windsor. Within about two weeks, she assaulted an elderly grandmother and was returned to hospital. At that point, we felt it necessary to ask for a treatment order.

The family came, gave testimony and supported our concern that this lady be treated. As she talked at that particular review board it was apparent to me she was not competent, but I felt that because of the fact she really had had no interviews with medical personnel, we must presume her competent.

The next case is a gentleman in the city of London who had terrorized his neighbourhood for a number of years, a paranoid schizophrenic. It was a situation where the neighbours finally called the police one night when he was brandishing a shotgun. The gun was actually fired and the neighbourhood evacuated and so on and so forth. He was taken into custody. Since there had

been a previous order for him not to have arms, he was charged in that regard and ended up in jail.

They were very concerned about his illness in jail and he was placed on an APA, application for psychiatric assessment, and put in our hospital. Again, he took very small doses of medication and refused really to take any adequate amount of medication. After six months of this sort of back and forth trials and refusals, we went for a treatment order. He improved significantly, to the point that we could not certify him and has been out of hospital now for almost a year.

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The final case is that of a 37-year-old lady married to a physician. They were separated and because of the separation he did not wish to give a consent for treatment. As a result of that, we went for a treatment order. She simultaneously went for a lifting of her certificate.

This resulted in four review boards over a period of about a month. Her lawyer, who was very astute, picked up the word "specificity" in the Mental Health Act and was asking for very specific details about the types of drug and the actual dose she would be given. We ended up in a complete impasse in that situation in that the two consultants who had agreed she needed to be treated did not agree that they would put a specific dose if they were not themselves responsible for the titrating of medication.

The long and short of it is that, fortunately, the lady had an elderly mother in Montreal who spoke only French. We managed to get her family doctor who is bilingual on the telephone and we felt we obtained informed consent in that sort of unusual way.

These are again vignettes of the cases we have had to deal with. The interesting thing about this particular lady is that although she disturbed and was very disturbed herself for about two months on our admitting ward, within two weeks of receiving treatment she was able to go home at Christmastime to be with her young child.

In general, we are saying that the numbers are small in terms of treatment orders but these are not inconsequential individuals, and that certainly the option for treatment orders must continue. The issue of competence is not clearly laid out at this point. I think you will hear medical testimony during this series where people will question whether any patient who ends up in a situation with certification could ever be competent. I am not sure I can give an example of that but I still feel it would be wise to leave the option for a treatment order for a competent person.

Regarding electroconvulsive therapy, I think the coroner's inquest that Dr. Draper described is clear evidence that, again, rarely--maybe not in the next few years but there will be a case--an elderly patient often will be in the situation, very depressed. The best treatment will be ECT and that should be available to that person when it is necessary.

The whole area of patient representatives is an attractive one in theory. We have great concerns about how that can be done in practice in terms of the way it is set out. It looks to me as though we may be running into a lot of bureaucratic problems in that regard.

Mr. Chairman: I am not exactly clear that I heard you correctly. You said the year 1968.

Dr. Galbraith: I am sorry; it was 1986.

Mr. Chairman: I presumed that was the case.

Mr. Reville: Maybe Dr. Galbraith would elaborate a bit. I thought I heard you say you thought it might be impossible for an involuntary patient to be competent?

Dr. Galbraith: I think it is very difficult to imagine a case where someone is so disturbed that he or she meets the criteria of the Mental Health Act for certification and yet at the same time is competent to make treatment decisions. I cannot think of a case where that would be the case.

Mr. Reville: You must have patients in your hospital who are not declared incompetent who are none the less involuntary.

Dr. Galbraith: Indeed.

Mr. Reville: Are we stuck with a semantic problem here or do you think--if you will bear with me for a second, it strikes me that as a physician in a provincial psychiatric hospital, you are confronted with three issues: Is the person a candidate for deprivation of his liberty? There are tests. Is the person a candidate for being declared incompetent? This is where you seem to disagree. That may be another issue. The third issue is, is the person a candidate for having his refusal overturned? Would you agree that there are three basic issues--committal, competency and consent--or would you say there are really only two?

Dr. Galbraith: I think basically there are the initial two that you mention.

Mr. Reville: I am sorry; the initial two being what?

Dr. Galbraith: The issue of whether the person is competent to give consent for treatment. The problem there is what kind of definition is legally determined to be the appropriate definition for competency. Sooner or later, that is going to surface in appeal courts and there will be an established precedent.

Mr. Reville: Are you saying you would prefer a system that in fact is the case in some jurisdictions, that a determination of appropriateness for committal also settles the question of competency right then and there?

Dr. Galbraith: We will never go back to that sort of system, but it poses an interesting theoretical question as to whether there can be a person who is truly certifiable but is at the same time competent. I would be very interested to meet such a patient.

Mr. Reville: Is it possible that a person who is suicidal and who demonstrates interest in ending his life so conclusively that he could be certified is yet totally competent to understand the consequences of refusing treatment? You say, "You can have ECT and you will feel less suicidal," and he says, "Sorry, I do not want to have ECT because I believe ECT will result in a short-term memory loss or a permanent memory loss or brain damage," or some such list of known side-effects of that treatment, which would seem to

indicate to me that person knows what he is talking about. Notwithstanding that, he still wants to die. How can you say that person is incompetent?

Dr. Galbraith: I can certainly think in terms of people with physical conditions who might be suicidal. I would not necessarily be convinced that person was mentally ill and electroconvulsive therapy may well not likely be the appropriate treatment.

Mr. Reville: On the final point I wanted to see whether we could flesh out a bit. When you were describing the myths under which you have to operate, the second one was that somehow civil rights exceed the right to treatment. Your view was that somehow there was not much literature on the question of right to treatment.

Dr. Galbraith: There has been little in the legal literature in Canada in this area at all. In the United States, there are many examples of actioning suits in terms of patients demanding that they receive appropriate treatment. They put pressure on state governments.

Mr. Reville: On the other hand, would you agree there is also a great deal of case law on the question of civil rights in the United States?

Dr. Galbraith: Indeed.

Mr. Reville: Going back, I guess Cardozo was the most famous decision describing the inviolate nature of one's person. First, on law factors, if you do anything to me without my consent, that is an assault. That strikes me as the very foundation of our common law and protection of person. You acknowledge that the case law is extensive and massive and in fact sometimes would present a psychiatrist with a problem when he is trying to deal with that.

Dr. Galbraith: I agree completely but I think there needs to be a balance somewhere with this issue as to whether the right to treatment of people who are really delusional, hallucinating, etc. in terms of the illness they suffer from is also of great consequence.

Mr. Reville: I guess this is where we cut the issue. The doctors are taking the best interest test; over against that is the patient autonomy test. It may be impossible to reconcile them.

1730

Mr. Chairman: Dr. Draper, I am gathering from your body language that you would like to get into this.

Dr. Draper: Yes. I do not know whether it is in order to come back.

Mr. Chairman: Sure.

Dr. Draper: The whole crux seems to be as you are describing, talking about that patient, that a rational conversation was possible. The cases we are concerned about are the ones where a rational conversation is not possible. I think Ms. Hart's question of the previous presenter brought that out, why patients are doing things. If someone wants to commit suicide because he has made a rational decision in a clear mind that he is fed up with the world, maybe that is justified. We are not talking about those sorts of cases.

Perhaps you will bear with me for 30 seconds to describe another case I personally treated of a young woman with a severe depression, with all the hallmarks of that depression, the guilt, the unworthiness and so on. She felt she was the worst sinner in the world. She came to electroconvulsive therapy. I was the one giving it to her. She held cut her arm. She lay back very quietly and said, "Go ahead with the injection, doctor." Now why was she saying, "Go ahead with the injection"? Because she thought I was going to kill her. She was convinced in her delusional system that this was the injection that was going to exterminate her and that this was what she deserved. She accepted the injection to be exterminating. Four treatments later, she was asking: "Can I have weekend leave? I want to go home." They are the sort of dilemmas--

Mr. Reville: Interesting legal questions, I would think.

Dr. Draper: Exactly. They are the real ones doctors come across that I honestly believe defy trying to legislate for, and yet they are the sort of problems we are faced with. To have to stand back some day because a legislator says, "You cannot treat such a patient," and see that person die is our nightmare. That is why we are protective about having this sort of long-stop safety net to be able to do something about the patient who is in that tragic situation.

Mr. Reville: One more question: The doctor has inspired me. What about this notion of removing these difficult questions from psychiatrists entirely, questions of committal, of competence and of consent, so that in fact you can behave as care givers and not have to be judges? Is that something that should be--

Dr. Galbraith: I think that would be a great relief to the way we feel at this point in time. Most of us have not worked in a jurisdiction that has had a judicial sort of system. We have heard horror stories in the opposite direction. We certainly need to explore in that direction. It is a very uncomfortable situation for physicians the way it is at the present time.

Our patient advocate met with our medical staff last Friday. There has been a decrease in the number of review boards at our place. I think he really thinks it was an organized plot to convince patients not to go to review boards. We had a long discussion with him about that. He knows very well that doctors abhor going to these review boards. In general, they find them very stressful. Some doctors feel more comfortable than others, as I am sure lawyers do, in that adversarial context. It is certainly not an area doctors feel very competent in.

Dr. Draper: I have visited a jurisdiction where that is the case. The staff is professedly comfortable with it because the judge comes every Tuesday morning and there is a court in the hospital. He says, "Right; 28 days' treatment," instead of saying 28 days in jail. It has removed all responsibility for them. I think there are doctors at the present time who are saying, "We would be happy with this," because there is a sense of frustration and they are saying, "Okay, if they are going to mess us around, let them go and do it and then we will treat the patients they send to us." But I think that in his inner heart the true professional really does not see that as the best way to proceed. They see it as a pretty blunt instrument.

Ms. Hart: Perhaps I might ask this of both of you to follow up on what the previous witness said: This is a very short précis, but it was something about a supportive approach to a patient with a mental illness works

better than treatment orders, although he did not use the words "treatment order." It was something about coercive treatment. Would you care to comment on that?

Dr. Draper: I think you have to divide psychiatry into two and this is the problem: there really are two psychiatries. There is a whole wealth of what we call neurotic illness, difficulties in adapting, problems at school, problems at home, problems at work, that sort of anxiety state, where you can sit and rationally work out with patients what their problems are and how they may conquer those problems. That is a world removed from the schizophrenias, the manic-depressive disorders, which behave very much like physical illnesses and distort the patient's thinking to the point where they cannot think rationally. There are two different sorts.

If I was talking about the neurotic patient or the anxiety state in the outpatient, I would be talking the same way as the previous witness was, that they need to be supported and worked through and all the rest of it. But you cannot support and work through with a delusional patient who thinks you are the devil and are trying to poison him and kill him off, that if he takes your medication, he is never going to wake up. How do you support and work through that person?

We know these are illnesses that behave as physical illnesses. We know there are chemical imbalances in the system in these illnesses. I heard treatment and chemical restraint being likened; I thought that was a bit out. We know that in schizophrenia there are disturbances in certain chemical receptor mechanisms in the brain and we know that every drug effective on schizophrenia alters or restores the balances in those receptors. The likelihood is that one day a treatment or a cause will be found for schizophrenia and for manic-depressive disorder; biological causes will be found.

The same is not true for all the other problems, which are very much problems of living and problems of developing. We really talk about two different psychiatries. It does not do anyone good to mix them up and start saying that because you can support that person out in the community, help him to get on better with their life, you can do the same with a severe psychotic. They are different illnesses, totally different situations.

He is making his point on his evidence, and we are making our point on our evidence. I think this is the problem with so much of this debate, that each person comes from their own position, looks from their own perspective and uses their own evidence to try to prove their point. There, I think I rest my case. Mr. Galbraith, will you add to that?

Dr. Galbraith: There was an excellent review recently in one of the Australian psychiatric journals of the world literature on antipsychotic medication. I am not talking really about the neurotic sorts of illnesses where a bit of tranquillizer may or may not be of much help, but of this type of illness, severe psychotic illness, schizophrenia, severe depressions; with schizophrenics particularly, psychotherapy was found by itself to be of no help at all, supportive or inside therapy. If indeed you added medication and gave psychotherapy, you got a very significant improvement on the situation.

There is some evidence as well that working with families to try to decrease the highly emotive component of some families, will indeed be helpful in the way of treatment, but drugs are still by far the mainstay. I think if a relative of mine had a schizophrenic episode, it would be malpractice if one

of my colleagues did not utilize antipsychotic medication.

Mr. Callahan: Is there not a further difficulty in that a person who is a schizophrenic and takes his medicine and gets to a state of wellbeing, if he slides off it he then becomes paranoid about having it and lets himself slide right into delusions? In fact, unless you can maintain him properly dosed, his very illness precludes him from continuing the medication and as he slides off, becomes delusional.

1740

Dr. Galbraith: It is an unfortunate story that we hear every day. A patient stops the medication and then gradually again becomes more psychotic. Some of these medications do hang around in the bloodstream at various levels for up to several months, so that often it is not a very dramatic change.

The one promising advance that has occurred, although the main drugs we have to use go back to the 1950s, is that we do have these depot medications now where one can use long-acting injections. Also, it means the patient comes back on a regular basis, once every two weeks or once a month. This has been a real boon to be able to keep people nonpsychotic in the community. But even those folks on occasion, and just anecdotally, when Bill 7 came out and there was coverage in the press about Bill 7, two of our patients who had been coming in and were having their moderate injections by consent came in and said, "We have seen in the paper that we do not have to take these any more." I suppose we should wonder why they did not know they did not have to take them in the first place, but that actually happened.

Mr. Callahan: I gather it is not just paranoid schizophrenics but there are probably other mental illnesses where a similar type of thing occurs. If they slide off, if they get to the stage where they--or if they are suicidal and they get to the depressed state having slid off the medication, the suicidal urge takes over and they do not wish to take the drugs because it would interfere with their major objective, which is to commit suicide.

Let me ask you though, if you get a situation where a person is schizophrenic and he has been dealt with by drugs and his balance is maintained so that he is rational and the whole bit, as a psychiatrist, as a result of his telling you he has not taken his medication or does not intend to, you can reasonably expect he is going to lapse back into a psychotic state.

You would have some difficulty before a review committee, I would imagine, to get an order to require him to take the drug. In my experience in my former life of practising, people who are that way are very clever. They can outfox a layman because he does not understand what the problem is.

Dr. Draper: I think you are putting a finger on a real catch 22 situation, because what if what the drug has done for schizophrenia is to bring about a remission? It is not a cure. If the person continues on the medication, he will stay in remission. How do you continue him on it? The chemists have been clever in developing long-acting drugs that have to be given only once a month, so if you can have the person come back to see you as an outpatient once a month and have the injection, he stays well. This has been done around the world.

But you are in a catch 22 situation, because six months down the line, the patient appears to be fully well and functioning and by any tests he is competent to make his own decisions. He makes the decision to get off the

medication and, of course, promptly relapses. There is plenty of evidence that people who are relapsing after treatment, where they have broken the treatment, are at graver risk of committing suicide, and so here we go again. It has a disastrous effect on them.

So there are problems there, and a whole educational component has to come into it. Once the person has gone into remission, that is not the end of the job. We are looking at educational programs at the moment which set out to teach the person then the necessity of going on with his own medication and how to manage his own medication. I think it is a long haul, with a whole education.

Mr. Callahan: I have deviated a little. I was interested in just getting a little information.

Mr. Chairman: Bill 190 does not deal with the situation of people's basic set of rights once they leave the hospital, as I understand it, if that is what you were suggesting. Maybe it should.

Mr. Callahan: No.

Mr. Chairman: I think the debate would be becoming more emotional than it probably already is.

Mr. Allen: Some of us are newer to this issue than others. I rather felt the exchange between Dr. Galbraith and my colleague went by me on the case of a suicidal person who, presumably, was involuntary. He had been involuntarily confined but none the less was able to understand the consequences of treatment and therefore should be considered competent and have the right to refuse treatment under the original bill. Your answer was that a suicidal person may not be considered mentally ill. I was not quite sure what the significance of that response was.

Dr. Galbraith: I was presuming that this may not be a patient who is involuntarily in hospital. To me, there are certainly situations where an individual who is suicidally depressed might not be mentally ill. I gave the example of a physically disordered person who perhaps has terminal cancer and may refuse treatment. He may also have some elements of depression, but I certainly would not see it as logical or appropriate in that situation to want to get a treatment order to treat his depression.

Mr. Allen: So you concede that he would have a right, none the less, to refuse treatment?

Dr. Galbraith: Indeed. There is no question there.

Mr. Chairman: Thank you very much for coming down on such short notice and your efforts to make it easier for us. We appreciate it very much.

We are adjourned until Thursday at orders of the day or four o'clock, whichever comes first.

The committee adjourned at 5:46 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

MENTAL HEALTH AMENDMENT ACT

THURSDAY, MAY 28, 1987

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)
VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)
Andrewes, P. W. (Lincoln PC)
Baetz, R. C. (Ottawa West PC)
Callahan, R. V. (Brampton L)
Cordiano, J. (Downsview L)
Davis, W. C. (Scarborough Centre PC)
Grande, T. (Oakwood NDP)
Hart, C. E. (York East L)
Jackson, C. (Burlington South PC)
Reycraft, D. R. (Middlesex L)

Substitutions:

McKessock, R. (Grey L) for Mr. Cordiano
Reville, D. (Riverdale NDP) for Mr. Grande

Clerk: Carrozza, F.

Witnesses:

From the Ontario Friends of Schizophrenics:

McLaughlin, C., President, Family Support Centre, Metropolitan Toronto Chapter
Beeby, J. C., Executive Director
Trell, L., Member

From the Ministry of Health:

Elston, Hon. M. J., Minister of Health (Huron-Bruce L)

From the Community Mental-Health Programs Federation:

Kydd, L., Co-ordinator
Higgins, C., Legal Counsel

From On Our Own:

Scott, R., Member
Shimrat, I., Member
Braithwaite, C., Co-ordinator
Weitz, D., Founder

From the Advocacy Resource Centre for the Handicapped:

McKague, C., Head, Litigation Team

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, May 28, 1987

The committee met at 4:04 p.m. in room 151.

MENTAL HEALTH AMENDMENT ACT
(continued)

Consideration of Bill 190, An Act to amend the Mental Health Act.

Mr. Chairman: I call the committee to order. This is the standing committee on social development. We are dealing with Bill 190, An Act to amend the Mental Health Act which, to simplify it for the purposes of our viewers, is an act dealing with the rights of patients in the refusal of treatment and the process in terms of determining who has the right to do so and under what conditions.

We have one procedural matter we should probably deal with before we move on to our delegations. We have four this afternoon so we cannot take too long on this, but I think it would probably be wise if we considered an adjustment to our clause-by-clause deliberations in order to ensure that we have them covered before the House rises.

At the moment we have decided that the public hearings would end on June 8 and we would move to Bill 80. At the end of six days of hearings of Bill 80, we would move on June 23 and/or June 25 to deal with clause-by-clause. There is some possibility the House may be adjourning on or about those dates, which makes it pretty tight in terms of getting things through on third reading.

I would be glad to hear suggestions from the members on how we deal with this.

Ms. Hart: I understand that the advertising process for Bill 80 is taking more time than usual because we are dealing with weeklies rather than dailies and we want to give people an opportunity to respond thoughtfully to the committee with respect to Bill 80.

I would suggest, therefore, given our problems with Bill 190 scheduling, that we might sit on Bill 190 on June 9, which extends our sittings one day. That gives a little more time to those who want to respond to Bill 80, so I would move that.

Mr. Chairman: To deal with clause-by-clause?

Ms. Hart: Yes.

Mr. Chairman: Okay. I should have explained to the members that we have learned that it will take about 10 days for us to get the advertising inserts into the multicultural papers. As a result, there would be very short notice for people coming before the committee or making written submissions to us.

Any further discussion on Ms. Hart's motion? Seeing none, all those in favour?

Motion agreed to.

Mr. Chairman: We will move directly to our deputations, unless there are other points of order.

Mr. Reville: I think there is a piece of information that probably should be shared with anyone who is interested. It is in respect to Bill 68. Perhaps the minister would like to address that, seeing that there have been some unanticipated changes.

Hon. Mr. Elston: Yes. Apparently the process was not able to accommodate what we thought was an agreement to process Bill 68 to postpone the implementation of Bill 7. We are now not going to be able to proceed with Bill 68, but we are drafting a bill which will be to the same effect. We will bring that to everybody's attention at the earliest opportunity. In fact, we started working on it this afternoon, as soon as we knew that Bill 68 would not be proceeded with.

The effect of the bill would be to--maybe I should tell you what is not happening. Bill 68 is not going ahead. As a result, there will not be a postponement of Bill 7, which will take effect as of one second after 12, I guess, on June 1. The earliest we could have dealt with Bill 68 would have been late on that Monday. The effect of Bill 68 would have been avoided because of the earlier implementation of Bill 7. As a result, we are not going to be able to proceed with Bill 68 but will have to do a new bill that will allow us to maintain the status quo pending our deliberations on Bill 190.

That brings us back to the original agreement that we had among the parties here, which was to look at July 10 as an acceptable postponement date. We are going to try to implement that understanding via another bill, which will be made available, as I say, as soon as I can get a draft of it. It is being worked on by Ms. Baldwin, who, may I say very publicly, is an extraordinarily wonderful assistant, certainly in my time here in front of the committee. I know she is probably upstairs going through all kinds of clauses to see which ones fit. So a new bill will be introduced as soon as we can get that done.

1610

Mr. Chairman: It sounds like it is in good hands if it is with Ms. Baldwin.

Hon. Mr. Elston: It is.

Mr. Chairman: Anything further? If not, let me call forward representatives of Ontario Friends of Schizophrenics. This is Mrs. Beeby. Just take any of these seats in front of me. This is one of the drawbacks, that you have to face me during this period, but you can look from side to side. Nobody will mind.

Mrs. Beeby: It is my pleasure, Richard.

Hon. Mr. Elston: I believe Ms. Hart, my parliamentary assistant, has also provided the draft amendments to the clerk. They can be circulated and may assist us in our clause-by-clause at a later time. If that has happened, that might assist all the people here.

Mr. Chairman: Thank you very much for being so prompt with them.

Mrs. Beeby, welcome. Perhaps you can start by introducing yourselves so that Hansard and the visual Hansard that we have can recognize you appropriately for posterity. We can then move on. Just make your presentation any way you wish, and I will open it up for questions following that.

ONTARIO FRIENDS OF SCHIZOPHRENICS

Mrs. Beeby: My name is June Beeby. I am the executive director of Ontario Friends of Schizophrenics. With me is Mrs. Claire McLaughlin, who is a volunteer president of the Toronto chapter of Ontario Friends of Schizophrenics. She would also like to speak to you. Claire has just whispered to me who the person to her right is, but I am nervous because I have forgotten her name. Claire, would you help me?

Mrs. McLaughlin: Yes. This is a parent, Mrs. Lynn Trebell.

Mr. Chairman: Welcome to all of you.

Mrs. Beeby: I am also the mother of a paranoid schizophrenic son who killed himself six years ago when he was 20 years old, so my interest in the problem of schizophrenia and its treatment is a personal as well as a professional one.

Ontario Friends of Schizophrenics is a self-help group with chapters in 27 communities in Ontario. Our members are families of schizophrenics, mostly parents, and our aim is to help one another cope when the horror of schizophrenia becomes a part of our lives and the lives of people we love.

We also advocate better care for our schizophrenic relatives while they are in hospital and for decent care for them when they are discharged from hospital to live in the community. There are not nearly enough services available to them. We also strive to have governments provide more research money to discover the cause and cure of this neurological disease of the brain.

The age of onset of schizophrenia is between 17 and 27 and since schizophrenia is an incurable disease, the person who develops it will have it for the remainder of his life. The disease strikes one in 100 in the population so there is a likelihood that there are 90,000 schizophrenics in Ontario. It is a serious problem for us in Ontario and for politicians in Ontario.

We are people who suffer from chronic grief. Our sons and daughters are sick with an incurable disease of the brain which causes them terrible suffering. We try to alleviate their suffering as much as we can as parents, but we cannot do this alone. We need the help of society. From our vantage point, it seems to us that society does not understand or care much about our relatives. There are not enough services to enable them to share fully in our lives.

We are beginning to understand that we must become story tellers, that we must bear witness to the suffering of the schizophrenic person so that you and others in society can fully understand the reality of schizophrenia and the devastation of the disease in those who are afflicted. We must speak for our relatives who cannot speak for themselves. We speak for the most seriously ill of the schizophrenics. We also speak for those who have killed themselves as a result of the disease. They are not here to speak for themselves, and we are speaking for them as well.

There are many myths about schizophrenia and great stigma attached to

those who have the disease. For this reason, as parents, we are often unwilling to expose our suffering children to the embarrassment and discrimination they face when people know they have schizophrenia. But we fear that we have been silent too long. We believe that our silence is actually harming the very people we are trying to protect. We realize now we must tell our stories as well.

When the Mental Health Act was amended in 1978, making it almost impossible to get our kids into hospital when they were psychotic, we suffered and they suffered, and we are still suffering. I realize that the focus of this meeting is not to deal with the problem of committal, but that must be a part of our conversation with you because, in our view, the next step you are contemplating, that is, to remove the possibility of treatment for some patients while in hospital, will only increase suffering.

This would mean that even when the most obviously and seriously ill person with schizophrenia is hospitalized, he or she may still not receive treatment. We fear that our relatives will be returned to us just as sick as they were when they entered hospital. We are also worried that hospital staff will not want to care for them because they will be so difficult to deal with and they will be released untreated. I assure you that there are literally zero services in the community for the seriously ill schizophrenic. There is no treatment in the community right now for the seriously ill schizophrenic.

We have had enough horrible experiences with a law which does not allow our children to be admitted to hospital when they need help. We can only imagine how much worse things will be when even those committed can remain untreated. We believe that those who are recommending these changes to the Mental Health Act do not understand schizophrenia, as we do who have looked it in the eye and have seen our children's agony when their ability to reason is gone along with their perception of reality.

We have also seen the return to better health with the use of appropriate, carefully prescribed medication. My own son, who was not considered sick enough to be committed to hospital, although he had talked of his impending death, and who refused medication because he did not think he was ill, was left to live in a nightmare from which we could not rescue him. He roamed our small apartment at night shouting at the demons who tormented him. He cursed his tormentors, and his 10-year-old sister and I lay in bed terrified of what might happen because we knew his voices had commanded him to kill us.

Matthew, my son, believed that God was going to create new people by using his molecules. He believed that was the way the universe worked. He believed that was the way God would eventually treat him. God would make Matthew's death look like suicide. Matthew believed he was doomed. There was no place for him to hide, no peace for my son without medication, and he lived in a state of pure terror. I watched him live in pure terror while he waited for instant annihilation from a God he could not hide from.

Last year, I sat on a panel with patient activists, people who had experienced terrible injustices in the mental health care system and who were trying to correct those wrongs. Thank heavens they are here to speak for our relatives. We are grateful for them and their concern and their love for the psychiatrically disabled, but I think they do not fully understand schizophrenia.

One of them told me that she believed that everyone had the right to

kill himself and should be free to do so if that is what he chooses to do with his life. A sane person might have that right, but my son was not sane to do the thing he did to himself. He took two ordinary dinner knives, placed the tips in his eyes and pounded his head on the floor until the knives pierced his brain.

Suicide is often the end result in the unmedicated, untreated schizophrenic. This happens more often than you may realize. One of the things we wish you would do is do a study on the number of schizophrenics who have killed themselves. In our organization alone in the past year, we have had 15 suicides of schizophrenics. I do not think people understand the number of schizophrenics who kill themselves.

To give you an example, in Oakville, there was a little item in the paper which said that there was a young man who had set himself on fire and had killed himself. The president of our chapter there, Bill Jeffries, who is also the founder of our organization, thought we should look into this. He looked up the name and discovered that this was not even a member of our organization.

If that had been anybody else, the papers would have said, "After suffering years with cancer"--if that is what he had been suffering from--"he succumbed to the illness and died from it." But a schizophrenic dies without any notice ever being made that he has suffered from schizophrenia and has indeed died as the result of the disease. We think if you understand this, you will understand our love and our concern and our fear for our relatives.

The schizophrenic son of a member of Ontario Friends of Schizophrenics, after having dinner with his family, jumped to his death from the Bloor Street bridge. A few days after his funeral, the father put his hand in his housecoat pocket and found a note from his son which he read. In the note, the son apologized to his dad for what he was about to do, but as he said in the note, his voices told him he must kill himself but he must not tell his father because his dad would try to stop him. This is not the suicide of a person who says that life is not worth living; there is something else at work here. We want you to understand that there is something else at work here, a biochemical imbalance of the brain which takes away the decision-making ability of those who suffer from schizophrenia.

1720

The father of this young man wrote the following letter to Marion Bryden, who is his member of provincial parliament. If you will allow me, I would like to read that to you: "Dear Marion: There is no known cure for schizophrenia although about a third of its victims recover spontaneously after one or two attacks. No one knows why. The drugs used to suppress its symptoms can have severe side effects and their use should be carefully supervised. Also, they are not always effective. Treatment in our underfunded hospitals sometimes leaves much to be desired, but with all its inadequacies, medical care offers the only chance that the majority of patients have of leading anything approaching a normal life. To refuse treatment is to close the door on hope. That is our fear, that you might close the door on hope.

"The opponents of forced treatment argue that it violates the rights of patients to make their own decisions, but their diseases already rob them of that right by distorting their thinking, so that rational decision is impossible. Schizophrenics, when in psychotic condition, do not meet the criterion of mental competency given in the Mental Health Act. They are not

'able to appreciate the consequences of giving or withholding consent.'

"It should be remembered that the discussion concerns involuntary patients. It would be highly illogical to maintain that the severity of their illness justifies keeping them in hospital against their will, but does not justify giving them treatment. Without treatment, the illness is unlikely to improve. So confinement in hospital will continue indefinitely. It is inappropriate and extremely expensive to use hospitals merely as places of custody.

"The debate should not be solely about the rights of patients; their families have rights too. The stress produced in a home by mental illness is unique and must be experienced to be understood. When a patient is severely ill and refuses medication, the whole family is condemned to a living hell." That is the end of this letter.

People suffering from hallucinations and delusions are not free to make choices. We need to understand this and protect them from this horrible disability by providing the medication which will enable them to be truly free and able to understand their illness and its ramifications. We are concerned about our schizophrenic relatives' freedom and rights too, but we want to save the lives of the people we love. We want to ease their intense suffering. We do not want them left to live in a nightmare from which they cannot escape on their own, because they do not know enough to ask for help.

We recommend that medication be handled very cautiously. We understand the problems with medication. A reluctant patient might be helped by having an expert in schizophrenia called in to consult for diagnosis and medication. We need to know, as relatives, that this powerful medication is treated very carefully, but in the end I believe we must leave in place the opportunity for a review board to authorize the giving of specified psychiatric and other related medical treatment to the schizophrenic. I want to repeat that we think that careful consultation must take place with proven experts on schizophrenia before such action is taken.

Forgive me if I sound emotional. I try very hard to be terribly professional in this, but I know my emotion creeps into my voice I know you will understand and forgive me for doing that.

I have prepared a package of personal stories from families of Ontario Friends of Schizophrenics to help you, on this committee, to understand the reality of life in a family of schizophrenics who are trying to help their children, especially the untreated schizophrenics.

Thank you very much for your time and for your kind attention to our concerns.

Mr. Chairman: Thank you, Mrs. Beeby.

Mrs. McLaughlin: I have distributed a package which includes something about the origins and the history and services that our chapter offers, and a research study called "Community Needs of Schizophrenics and their Families," that was done in 1986, which I think committee members might find useful. I do not intend to go into it at this time.

With regard to Bill 190, we have a few specific concerns. I also am a parent of a young man who is 26 and who has paranoid schizophrenia as well, but he is well now.

In subsection 1a(2), the substitute consent person is identified in the bill as a person who has attained the age of 16 and apparently is mentally competent. We feel that this person should not take priority in the rankings under subsection 2 over those persons mentioned in paragraphs 1a(2)4 to 1a(2)7, the family members. We would request that the substitute consent person be moved to the end of the list. The reason for this request is that family members listed in paragraphs 4 to 7 may often have legal obligations, the paying of rent for apartments and in many cases they have an intimate knowledge of the medical history and the life skills of their relatives, and they are in a much better position to make decisions than an apparently competent 16-year-old person who may have only known the ill person for a couple of weeks and who has no ongoing knowledge of the medical history of the life skills, and will not have, because the review board does not have previous medical history introduced before the hearing.

I know that there is some concern that the child of the patient may also present a problem as he also could be 16 and apparently competent. However, he will be directly affected by the disposition of the consent decisions, so I think it is a little different situation for them. We are also concerned that in subsection 1b(1), the patient's representative is similarly identified as a 16-year-old apparently mentally competent person and is appointed while the patient is competent. However, if he then becomes incompetent, the representative still has powers under the act, and we feel that the representative's powers should cease, or not, whenever the person becomes incompetent, as in law.

The only occasion on which a representative of a competent person in law retains those powers when the person becomes incompetent, is in the granting of a power of attorney, and that is done specifically by competent people to protect their interests, as they appreciate they will soon become incompetent. I think that this should be made clear to the patient, that his consent will be continued or not continued, if he becomes incompetent, because it is not made clear at the present time in the bill.

We also feel that the people identified in Bill 190 under section 35 of the act--whatever it was, I cannot remember the numbers, you will forgive me--as able to give consent, or as the patient's representative, should be notified in writing of the review board hearing. They should be able to give testimony at a review board hearing and receive written notification of the review board decision for obvious reasons. Too often the patient has been discharged from hospital to the streets or home, following a review board decision, when the family is totally unprepared and has not had the opportunity to make the necessary arrangements.

I think it is important that this committee realizes that families caring for patients recovering from schizophrenia are involved in home behaviour modification programs, and this may involve physical environmental changes to automobile keys, storage of liquor, where we keep our money, and so forth. Preparations must be in order prior to the patient returning home, which must involve advance notice. I would like to introduce, when I am finished, Mrs. Lynn Trebell, to my right, a parent of a schizophrenic person who was involved in the Queen Street review board hearing yesterday. She was not notified of the hearing, attended because of her perseverance, was not permitted to speak and will not receive any notice of the decision of that review board. She might elucidate on some of the problems around that.

For these reasons and others that may arise around the issue, and the definition of competence, we would request the committee to delay the

implementation of Bill 190 until 1988. The medical definition of competence, that of the patient's competence to appreciate the advantages of receiving treatment, and the risks of rejecting medical treatment, we feel do not take into account the competence of a patient to function in the community. He or she may be able to reject medical care, but be incapable, as noted in many of the behavioural history notes in medical records or family accounts, to care for his personal self or his surroundings. The assessment of competence must take into account his ability to function over a period in the community and his ability to care for himself.

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That is really all I have to say. I would just like to introduce Mrs. Trebell.

Mr. Chairman: Go ahead, Mrs. Trebell.

Mrs. Trebell: I have a 25-year-old daughter who suffers from paranoid schizophrenia. She was found unfit for trial and was sent to Whitby Psychiatric Hospital. Her board of review meeting came up yesterday. I was not advised of when it would be. I had a hard time finding out when it would be. It involved a few long distance phone calls. Then when I went to the meeting, they let me in, but I was not allowed to say anything. I do not know. There are so many things I could say and I know I do not have any time. What else?

Mrs. McLaughlin: It is up to you. You could speak for the little time you have.

Mrs. Trebell: Okay. Can I say one of my concerns? Okay. One of my really big concerns is the fact that the doctor did find her competent now or ready for trial. Her trial date probably will be in around six weeks or more, and she will be in Whitby until then, but she just attacked someone in the hospital three weeks ago. This is not fair. She is most likely going to be out on the street soon. I do not get a chance to say anything to anybody.

The doctor agrees with me. The whole thing was up to the lawyer. The lawyer probably will not bring it into court because she is my daughter's lawyer. It is a vicious circle. She is going to be out again on the street. My mother and I probably will be attacked again. She will not accept her medication. She is taking it but only because she has to now under the Lieutenant Governor's warrant.

There is the schizophrenic treatment and education program in Whitby and she lasted two weeks in it and they kicked her out of it. She should be on medication properly and then allowed to go through the STEP program until it is finished. Then when she is ready and well, because she is well when she is on the right medication and then accepts her illness and has been taught about it, then fine, come out and then we can handle the situation. She is dangerous any other way.

Mr. Chairman: Would you like to add anything further?

Mrs. McLaughlin: I think it was important that Mrs. Trebell persevered to go to the review board hearing, but the difficulties are that she was not able to say anything.

Mr. Chairman: Or get notice I gather of what--

Mrs. McLaughlin: And will not get notices of the decision.

Mr. Chairman: Thank you for coming.

Mrs. Trebell: Thank you very much.

Mr. Chairman: We now open up it up. I guess we have some people who are anxious to ask you some questions.

Mr. Reville: Maybe I can start with you, Mrs. Trebell. I think your concerns about not being involved in these hearings are very legitimate ones. In fact, you might want to be in touch with the minister about this. Can you tell me whether your daughter made a court appearance and then was ordered for an assessment? Was that what happened?

Mrs. Trebell: She was assessed for 30 days in the Metropolitan Toronto Forensic Service.

Mr. Reville: Yes. Okay, and at that stage was found unfit to stand trial?

Mrs. Trebell: Yes.

Mr. Reville: But subsequently has been found fit it seems to me?

Mrs. Trebell: Yes. She is fit for trial now because she understands what a trial process is, but she is not safe out on the streets yet. She is not herself yet.

Mr. Reville: It is a completely different question that I am asking.

Mrs. Trebell: Okay. Sorry.

Mr. Reville: Do you think in fact that she should be an involuntary patient at this point? Is that what you are saying?

Mrs. Trebell: Yes.

Mr. Reville: I think it would be very useful for you to be in touch with the minister about this because you have two systems at work here. There is the justice system and the mental health system. You are concerned about your safety and your daughter's safety. It appears as though the justice system is not going to deal with it, so the health system will have to. I am glad you came, but I think you should probably be talking to the minister about why you were not allowed in on this hearing because obviously you have an interest in it.

Mrs. McLaughlin: There is no mandate in law to say that she is--

Mr. Reville: Then I think there should be.

Mrs. McLaughlin: That is what we are asking for.

Mr. Reville: Regrettably, that is not what this legislation is about. We are not dealing with Lieutenant Governor's warrants here.

Mrs. McLaughlin: No.

Mr. Reville: Mrs. Beeby, I wanted to ask you some stuff, if I may. May I start by saying I always admire your courage and commitment and the love you obviously have for your son and for others who are suffering. I thought your presentation was very balanced and I appreciate that.

One of the things you said was that there are occasions when in fact you do not believe the committal requirements are appropriate. I do not know whether your documentation deals with that problem, cases in which people are not admitted when it seems clear they should be. If you have cases like that and you want to present them to the committee in writing, that would be great to have.

Mrs. Beeby: Thank you. The reason was that I felt this committee was only meeting on the review board and we had very strong concerns about committal and I thought this was not the place to bring them, but we would be delighted to bring them.

Mr. Reville: The issues tend to run into each other though. When I talk to your group and people in your group, often they say they think part of the problem starts when people are not admitted when in fact they should be.

Mrs. Beeby: Most definitely. That is our--

Mr. Reville: This bill deals with what happens after they are. The points you raise about they may not receive treatment is another good point. Again, I do not know how this committee is going to deal with that, particularly because the people do not get into a treatment program, be they in the community or in a hospital, clearly they are not going to get treatment. I know that you are working on that and are worried about it.

Were you aware that the minister is intending to set up a committee on the whole question of competence?

Mrs. Beeby: No, I was not and I am pleased to hear that. I guess one of the things we are concerned about is that things move very slowly because we feel that when the idea of deinstitutionalization occurs, like intellectually that is great. We agree with that completely, but what happens then, and I think we all know it, is the people were put out of hospitals and there were no services left for them in the communities, so we moved too quickly. I mean we are afraid that maybe we will again move too quickly to do away with the review board without looking at other things down the road. Leave the review board in place and down the road let us look at competency, but for God's sake, we would say, do not make things worse by doing away with the review board until we have other systems in place to take care of those schizophrenics who are incompetent, but who are not shown to be incompetent under the existing legislation.

Mr. Chairman: I will allow you one more.

Mr. Reville: One more. You are aware that if a person is in hospital and is refusing treatment, but is considered to be dangerous to himself or to others because of their state, the psychiatrist in charge can order restraint, which could be medication?

Mrs. Beeby: I understand that, but I think what I am afraid is that the psychiatrist may not question closely enough to determine whether the person is in fact a danger to himself. I would think that somebody like my son who has this terrible fear of God's plan for him and lived in abject

terror, that might not be viewed as a danger to himself but he was suffering horror. The peace he got under medication--I saw him--it would have been only humane to give him some help at that time, which he was unable to ask for. I am worried about a true understanding of schizophrenia and psychiatrists asking enough questions to fully understand the pain a schizophrenic is suffering.

Mr. Callahan: Just very briefly, as I understand it, one of the real difficulties with schizophrenia is that if the person ceases to take the medicine or does not take it regularly, they then get paranoid and, in trying to give it to them, they believe they are being poisoned or the person is trying to treat them badly. I suppose in a very real sense that may make the difference between that and other types of mental illness.

Mrs. Beeby: It is a distinct disease. We think it requires different treatments because of the different issues associated with schizophrenia.

Mr. Callahan: Okay. Thank you.

Mrs. Beeby: There are people with schizophrenia who have smell and taste distortions and because of that, they believe people are trying to poison them because they smell and taste things that are not there. I guess if you knew two years down the road that you were going to have this disease and because of it you would not accept medication which would help bring you to reality, you would want me, if I care about you, to insist on the medication that would help you get back to reality. That is all we are trying to do for--

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Mr. Callahan: Not only for the patient's but also for the relatives' wellbeing. I know a number of people who have gone through that agonizing experience.

Mrs. Beeby: It is and yet we would say to people that we will be fine. We can handle the emotions like any other parents of a child with a horribly devastating disease like leukaemia or something. We can live with it. Our pain lies in the fact that when our kids are this sick we cannot get help for them. They are often on the street or if they are in our homes, often they are terrifying us and we cannot do anything about it.

Mr. Andrewes: Mrs. Beeby, would you feel better about the discharge procedures and treatment procedures as they exist today if there were community supports in place?

Mrs. Beeby: One of our problems is when parents call our office. We feel now that we have to be very vocal and say, "This is our problem and something has to be done about it." We say to parents when they call our office, "Tell the hospital that we want discharge planning when a person leaves the hospital." It is all very well for us to do this to the hospital, but the truth of the matter is that even if there is discharge planning, there is nothing in the community for the people to discharge the person to.

It is an enormous problem about services in the community. As much as we scream at hospitals, we understand that there is nothing in the community. We need to show that we care about these people and establish care for them in the community. We cannot put them out of hospital; they have an incurable ailment and they are out in the community with nothing in place for them. That is our major concern. We are not parents who are trying to shove our kids into

hospital to get them out of our hair or anything. We want them out in the community to share our lives as much as we can. Our concern is that there is nothing in the community for them.

The sicker they are, the less there is for them. Group homes will not take schizophrenics with a recent history of suicide or violence towards others. They will not take a person who is not taking medication. They will not take a person who is on alcohol and drugs. A lot of these kids are doing that sort of thing. There is no room for them right now except back in the family home with ageing parents--they are an old crowd when our kids get this disease--and the parents cannot cope with this, or else, sadly, on the street. They are the lepers of our society. We have thrown them away. I say that my son was thrown on a garbage heap by society. If you knew the treatment my son received in the system, that is exactly what I have to say society did to my son.

Mrs. McLaughlin: Can I comment on your question? One of the difficulties with discharge planning is not that there are not a lot of resources. As Mrs. Beeby has said, there are millions of public dollars going into resources, to group homes, to rehabilitation centres and to treatment programs. As she has said, access to those programs is denied to people who have a behavioural history such as she has described. That is the real problem here. We are dealing essentially with a group of people who are falling between the cracks. They are too well to be in hospital but too sick to get into a program.

My son lives at home with us. Families can cope very well when you have a father and mother who support each other and are committed to a definite plan of action. The difficulty is when, as Mrs. Beeby was, you are a single parent, or there are ill parents or elderly parents. Those are the three categories where total support and housing is really necessary.

Mrs. Beeby: I do not think they fall between the cracks. I think the system is one big crack and those who do not fall between them are the fortunate few who land in the small places where there is support for them.

Our organization is probably made up of parents of the most seriously ill. If you are doing okay maybe you do not join our organization, but our parents are suffering terribly by the lack of service.

One has to take opportunities where one finds them.

Mr. Chairman: When you get your platform, use it. I have always said that. Sometimes I have been (inaudible). Are there any further questions? If not, thank you very much, Mrs. Beeby, for attending today. We appreciate it.

Mrs. Beeby: Thank you.

Mr. Chairman: Our next presenters are from the Community Mental-Health Programs Federation; Ms. Kydd and Mr. Higgyms. The seats are warmed up. Please come ahead. I do think it will be necessary to introduce yourselves. I think we can distinguish between the sexes here. We have your brief circulated to us. You can take us through it in any way you would like and then we will move to questions following it.

COMMUNITY MENTAL-HEALTH PROGRAMS FEDERATION

Ms. Kydd: First, we would like to thank the standing committee on

social development for this opportunity to address the committee on Bill 190 and the mental health system.

The Community Mental-Health Programs Federation believes that this legislation, Bill 190, must be considered in the context of the entire mental health system. This proposed legislation deals with the right to treatment but limits the focus of the issue to one form of treatment. Treatment in the broader context must include medical treatment and institutional care as well as long-term community mental health care. Therefore, in order to properly consider Bill 190, it is necessary to consider the broader issues of the mental health system.

All of the federation's 170 member organizations operate voluntary services. These services range from alcohol and addiction services to vocational programs.

The federation's members provide community mental health care to individuals who have experienced serious mental health problems. The majority of these individuals have been diagnosed with schizophrenia, with the next largest category being affective disorders. These individuals typically have been hospitalized on numerous occasions.

Mr. Higgyns: I would like to add a little specific information about that. The majority of the clients we work with are diagnosed as schizophrenia of one of a variety of kinds, with the next largest group being affective disorders. The manifestation of that illness in the clients, or of that problem in the clients, in our group homes is quite serious. The individuals come to us with lengthy, repeated hospital visits.

In one instance, one of my programs has a woman in it who was in hospital for four consecutive years without an outpatient stay. They include people who have had serious suicidal behaviours, including very dramatic and devastating gestures, and not infrequently at that. I would say without fear of contradiction that the majority of our clients has undertaken that kind of behaviour at least once.

Acting out behaviour or what is sometimes referred to as behavioural histories also are among the behaviours the clients manifest and are treated or worked with in the community systems. That also includes a range of behaviours from the bizarre to the dangerous.

We have individuals in the system whose symptomatology, even while in treatment, even while under the care of the psychiatrist, even while in the house, involve chronic, ongoing symptomatology that does not relent. In other words, their behaviours, delusions and hallucinations are consistent. In other words, the people we work with in the community mental health system are there for very serious reasons. We are not working with the worried well; we are working with the psychiatrically disabled. There is an endless number of good, specific examples and documentary examples to substantiate that.

Ms. Kydd: We support the right of individuals to have the choice of services to meet their needs from a balanced and comprehensive service system.

Currently, decisions by individuals and their attending physicians are limited by the lack of service options, both in the hospital and in the community. Often the choices are medical services or no services rather than choices that would allow for the selection of a service plan, including both medical services and community-based mental health services in complement.

Currently, medical intervention typically involves brief hospitalization with psychopharmacological treatment. Individuals are then discharged into the community, survive there a short time and are rehospitalized. In the majority of cases, the individual is again faced with the same choices that have resulted in only temporary improvement of their situation and become increasingly reluctant to repeat the treatment plan.

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Based on our experience, we believe that individuals would be more likely to comply with medical treatment if complementary community mental health services were an integral part of that plan. This balanced service plan offers real hope for lasting change because it offers a realistic chance for positive community integration. Individuals are placed into the community mental health system and are able to maintain a good quality of life in the community with many fewer rehospitalizations and continued support. As well, the active involvement of the individual in the development of that plan is an inherently therapeutic process.

Mr. Higgins: I would also like to add a little detail around this point. Frequently, our clients experience the detrimental side-effects of their medication. Frequently, they confront the medication's need in the first place and struggle with those issues and would prefer not to be on it and would prefer not to be under many of the treatment regimens that are prescribed. This is not an unusual event in a community health facility. However, what we have experienced is that people generally are more willing to negotiate and are more willing to consider those alternatives because they have a realistic hope for being in the community, because it is not simply another go around of something they know does not provide them with any long-term change in their experience of their lives.

They know that if they accept a brief rehospitalization they have somewhere to come back to. We hold the beds. We hold their places. We hold them for as long as we can, which typically means as long as we are able to afford it. Even sometimes when we are not really able to afford it, budgets are looked at for ways to make it possible. What we get basically is better results in those negotiations and typically we do not run into those things as irremediable road blocks. They are solvable problems in the context of a system that deals with the whole life of the person in the community, recreationally, vocationally, a place to live and so on.

Ms. Kydd: We support the government's conclusion that the solution is the caring community. The public information campaign to this effect, sponsored by the Ministry of Health and produced by the Canadian Mental Health Association, Ontario division, is a laudable effort.

In a recent speech to the Community Mental-Health Programs Federation, the Minister of Health (Mr. Elston) stated that two thirds of the patients are admitted to psychiatric hospital for less than two weeks and fully 90 per cent stay less than one month. In Ontario, there are 150 individuals a day discharged from psychiatric units into the community.

Mr. Higgins: I would like to add that there is some further evidence that in fact there is a terrific demand for the services provided by community mental health programs. In a recent conference on psychiatric services sponsored by the Ontario Hospital Association, they examined alternatives to inpatient care and a doctor from the Clarke Institute of Psychiatry quoted a study done in 1984 that suggested that for every one individual who is an

inpatient being treated for schizophrenia, there are at least four in the community requiring some form of supportive treatment. That statistic is pretty conservative.

The essential point to raise here is that for everybody who is in hospital, when they are discharged they go to the community. So 100 per cent of the people who are in hospital end up in the community mental health system, one way or the other. They stay the majority of the time there. That is where they are. That is where their families are. That is where the social system is. There is no getting around that this is where the demand is for services.

We would also like to say that the demand, and we are going to talk about this a little later, is not being met. Perhaps I can provide a little detail there, essentially in agreement with some of the points made by the previous presentation.

Ms. Kydd: The people are in the community and the resources are not. The ability to choose treatment is limited by the lack of accessible services. Given the long-standing governmental policy of deinstitutionalization, and given the government commitment in the throne speech to "provide a broad range of accessible, community supports to foster, encourage and expand opportunities for independent living for seniors, the physically disabled, developmentally handicapped and discharged psychiatric patients," we must have more community mental health services if we are going to have a caring community.

Currently, there are a number of community mental health services in the province that provide high-quality services to individuals with mental health problems. These programs are evaluated stringently through a two-year developmental phase involving ongoing monitoring, regular formal reports and a final evaluation prior to ongoing funding. These reports are on file at the Ministry of Health and will be available to this committee.

In Ontario, we have the foundation of a community mental health system of high calibre that was developed over the past 15 years. This system is similar to community mental health systems in the United States and Europe that have been in existence for over 30 years.

Unfortunately, the community mental health system in Ontario is inadequate to meet the needs of our citizens. The result has been gaps in service, overburdened programs, homelessness and program waiting lists, some as long as two years. The community mental health system is funded at the level of six per cent of the total mental health budget and less than six tenths of one per cent of the total health budget.

The community mental health services branch of the Ministry of Health has recently provided community-based programs with a document entitled "A Mental Health Service Framework for Planning." This document was produced for the Ontario district health council executive directors by a subcommittee comprised of ministry personnel, community representatives, the Canadian Mental Health Association, Ontario division, and district health council representatives. This document, which we enclose, outlines a comprehensive and balanced service system that encompasses the system needed to provide a caring community.

In order to implement this framework, we believe a legislative authority is required. We have included a draft of such an authority that we would like

to table as an amendment to Bill 190. The Framework for Planning document provides a working document to utilize in developing such an authority.

We recognize this is only a small beginning to the process necessary to develop such legislation. The federation would be willing to work with the committee, the Ministry of Health and other community organizations and consumer groups to develop appropriate legislation.

Also necessary is the commitment of such funds as are required to provide the citizens of Ontario with access to comprehensive community mental health services.

Mr. Higgyns: I would like to add a little bit of detail on that too, hopefully in congruence with the previous remarks.

My organization operates two high-support houses in Toronto. Our waiting list for a brand-new referral received today is likely going to be a couple of years. The system that exists is a good system; there is simply not enough. We cannot take on more people. We cannot put 20 people in one house. We need to have greater resources to deal with the issue.

We also have a relatively unusual program that staffs a house with two staff for 24 hours. It was cut back from its original staffing component and works with people who experience very ongoing, persistent and sometimes pernicious symptomatology. That is the one and only in Ontario. We have had referrals from Montreal. We have had referrals from up in the hinterland where there are no choices except nursing homes. And this is Toronto, where there are relatively numerous services, perhaps not per capita but there are more. If you go into small towns, there is no balance in the system whatsoever, if there is any system at all.

Therefore, the choices are between hospitals and families; families that struggle with their members and families that need the kind of supports that we know we can provide but that we are not able to provide. There are numerous submissions--hundreds--by professional groups, organizations, hospitals, community boards for new programs and they are simply not funded. Those submissions all go in with the needs assessment, and the needs are not being met.

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Ms. Kydd: We suggest to the committee that Bill 190 takes too narrow an approach to the right of individuals to receive mental health services of their choice. Therefore, we recommend that the committee consider Bill 190 in the context of the broader issues of our mental health system and support the development of a comprehensive, flexible and accessible mental health system.

Mr. Reville: Thank you very much for your presentation. I am familiar with what your federation is all about. I am glad you are there.

What you have appended to your presentation is a detailed plan for community mental health services. It is almost like a community mental health care charter, it strikes me. You did not read it, but I would like to indicate that they are mandated to be established and funded. They deal with concepts like individualization, comprehensiveness and integration, adaptability, co-ordination, developmental orientation; mandated to be designated to an authority and safeguarded, which would require advocacy, I assume. This would clearly be a marvellous addition to anybody's Mental Health Act. I congratulate you for bringing that forward.

I did want to ask you one question. You say your waiting list is up to two years. Could you comment on the fact that in the past few years, the growth in the number of group homes and the agencies delivering group home services has been rapid? In fact, I discovered in a leaflet of one of the members here that last year 181 units were allocated to the Supportive Housing Coalition, 81 to House Link, which is a sister or brother organization of yours, and this year Supportive Housing got another 44. Are you saying that, notwithstanding that increase, you still cannot keep up with the demand?

Mr. Higgys: I would like to address that specific increase in a little bit of detail. Those units were allocated to various programs from the Ministry of Housing. The Ministry of Housing has funded the capital development, mortgages and operating funds to actually run the buildings. That gives us a roof, but it does not provide us with a single staff member. So we look to the Ministry of Health for complementary funding to do that. The complementary funding for those units has been at a level that allows for staff to visit an apartment perhaps once or twice a week for a few hours.

Certainly, to many people that will be an important resource. Housing in Toronto is at crisis level for very many citizens of the city. Having a reasonable place to live that one can afford is vital, and having services on a weekly or as-needed basis may be very sufficient and very helpful for many people. I think it is a laudable idea.

The services that I am describing are one model and not the only model. Perhaps I might say there is scope for more models at the high-support end of things. Those deal with people who require some form of support 24 hours. The funding for that kind of program is not even envisaged for any of those housing units that I am aware of, that I have ever heard of. That is the kind of funding that perhaps will address many of the more serious issues and that is the kind of funding that is not forthcoming from the Ministry of Health.

Mr. Reville: So the commitment of the Ministry of Health is less than the commitment of the Ministry of Housing, in your view.

Mr. Higgys: I have no idea of the actual figures here, but if real estate values are any factor, I am certain that is the case.

Mr. Reville: I am not talking about dollar value here. I am saying what Health is providing is for low support and in your view what is needed is high support, and although the houses are there, you do not get the level of funding from Health to staff them at high-support levels.

Mr. Higgys: Yes. To this date, there is only--

Mr. Reville: Members of the committee may not realize that there are four or five different levels of support in a group home. Maybe you can go through it real fast and that will be me out of this question.

Mr. Higgys: Essentially, the levelling system goes like this. Level 1 provides a staff member on site 24 hours a day. Level 2 provides a staff member typically during the day and early evening but not overnight and not on the weekends. Level 3 provides a staff member typically one or two regular drop-ins a week and occasional visits as required. In level 4, the staff member would attend only at the request of the person living there. What we are getting is an excellent development--and I think we should not overlook that--to serve a population which is needy, who require a low level of support and who require affordable accommodation.

But the system is now basically a triangular shape with the flat part on the top. The point on the bottom is the level 1 system, the high-support end of things, which is relatively small. If you count all the level 1 facilities in Toronto, I would make a fairly educated guess that is not more than 120 beds, which serves the Queen Street catchment area and the Whitby catchment area. I would say that amounts to maybe three million people.

We know the incidence in mental health problems statistically is one in 10, depending on how you count it, so you can see that 120 beds for three million people is not going to provide the kind of flexibility and accessibility of service that we feel it needs, that the people ask for and that our waiting lists indicate the families want--as a matter of fact, even the government is talking about it in the throne speech--to serve people in their community. We have a problem.

Mr. Andrewes: I could not agree more with your final statement on page 3. I guess the problem is that we are confronted with a statute here, and your statement certainly complements the statements of Mrs. Beeby and others. We are confronted with a statute here which is narrow based and it deals with three or four different subject areas, the most significant being the whole question of review board procedures and whether there should be review boards or not. I wonder if you have any advice for us on that particular narrow issue.

Mr. Higgyns: The difficulty we would have in making specific comments about Bill 190 in detail is that, given the recent change in the bill, which we received only a few days ago, we have certainly not had the opportunity to poll the membership of the federation for a collective opinion. So I cannot say that the Community Mental Health Program Federation can make an official statement under the circumstances.

Mr. Andrewes: What is that recent change?

Mr. Higgyns: There are a couple of sheets added, I believe, to the act. Let me just see if I have it here.

Mr. Chairman: Probably those amendments that were mentioned in the opening statement by the minister and that he tried to circulate.

Mr. Higgyns: Yes. I have them here.

Ms. Kydd: The minister gave us a copy of that in a meeting that we had with him this week, on Tuesday.

Mr. Higgyns: Generally, I would reiterate, though, that I think much of the issue revolves around a forced choice between medication or not, between one particular style of treatment or not, without complementary services that will support different approaches.

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I will give you an example of what I mean by that. If someone is to be released into the community and has no place to go except for perhaps a rooming house somewhere with no particular community follow-up and so on and so forth, the doctor may feel it is a constructive idea to medicate that person at a certain level in order to reduce symptomology, in order to make it possible for that person to live in the community without being overstressed and experience another kind of traumatic episode.

That person may view that medication increase on the eve of going back into the community as a very negative event. They think going back into the community is a sign of positive things and medication typically correlates with things getting worse. It is a confusing message and it has very nasty side-effects at times. Nasty is certainly an understatement. Some of those side-effects cause irreversible damage, as I am sure you have already heard.

That person then says, "Why should I be taking more? I am going back in the community" and the whole thing goes awry. If that person had the option of going to a landing pad, to a halfway house, to some sort of supportive system, knowing that was in place, the doctor in the first place would not need to up the dosage in order to lower the symptomatology and so on and so forth and the person would not be in that sort of catch 22, "I am getting better but you are giving me more." They would not be in that kind of experiential thing where they think they are making a step forward and being medicated backwards and the situation then resolves in a much different level. That is where the thrust of the federation's address is at.

Ms. Hart: Following on from that, given the system as it is now, do you support or not support the concept that a psychiatric patient should be able to refuse consent to medication without any recourse to a review process?

Mr. Chairman: It looks like it is falling to you again, Mr. Higgyns.

Mr. Higgyns: The federation believes that individuals should have the choice of a range of treatments. That is the bottom line. In terms of compelling treatment or being able to resist enforced treatment, I think that basically begs the issue on the scale that we are talking about. The rate of refusal is extremely small in the context of the mental health system, and there is information and research that demonstrates the incidence is something like 16 in 1,000, or less.

We really are putting our emphasis in this brief and are prepared to speak to that, that we need the choices and that is where the mental health system should go. Bill 190 is simply too narrow and is considering too narrow a position on the whole issue.

Ms. Hart: I understand your submission on that. What I would like you to focus on, if you could, is--perhaps let us bring it down to the representations that were made to us previously by the Friends of Schizophrenics. There we heard that because of the nature of the illness, the symptoms of the illness are from time to time to refuse consent to medication. That group seemed to feel that it was necessary in the world as it is today to have the review process.

What I would like you to direct your mind to, if you would, is what do you do in that situation, given the system as it is today, accepting everything that you have said about the future?

Ms. Kydd: I would like to point out that in community programs, with the person going into hospital saying, "I am going to have to have treatment," you usually can work with the person to accept that if they know they are coming back out to something. We have found, at least in our program and our personal experience, that very few people refuse because they are part of that plan. They know they are coming back into the community and very few cases ever refuse treatment.

Ms. Hart: But even you in your own brief have said that there are--what was the number--15 in 1,000. Are we to write off those 15?

Mr. Higgyns: No, that is not what we would say. In the event where the treatment that is required is life-sustaining treatment, that is a necessity. I think the federation would agree with that.

Ms. Kydd: I think that is already covered under existing legislation.

Ms. Hart: How?

Mr. Higgyns: I am not sure if it is or it is not, but I would reiterate that if the treatment is life-sustaining treatment, and it is clear that is the case, then the federation would agree with the necessity of that treatment.

Mr. Reville: Supplementary.

Mr. Chairman: We are running 15 minutes late.

Mr. Reville: There is a very critical point here, Mr. Chairman.

Mr. Chairman: All right.

Mr. Reville: It has to be cleared up and I want the parliamentary assistant to understand the legislation. Is it not the case that there are restraint provisions in the Mental Health Act that allow a physician to impose treatment if in fact someone's life is threatened? Is that yes or no?

Mr. Higgyns: Yes.

Ms. Kydd: I think so. That is what I was referring to, that there is a provision.

Mr. Reville: If the patient is asked, "Would you like to have 500 milligrams of Haloperidol?" and they say no, would you require that patient to take it anyway? That is the question that I think Ms. Hart was asking.

Mr. Higgyns: Is that what you are saying?

Mr. Chairman: Is that the question you are asking, Ms. Hart?

Mr. Higgyns: If someone is asked to take medication and they do not want to take it, and--

Ms. Hart: And they are schizophrenic.

Mr. Higgyns: --and they are schizophrenic.

Ms. Hart: Yes. Part of their symptomatology is that they will say no.

Mr. Higgyns: You are saying they are not at risk?

Ms. Hart: No, I did not say that. You have a range of situations--

Mr. Reville: We will pose it to you very clearly. Patient X is confronted by Dr. Y. Dr. Y says, "I want to prescribe 500 milligrams of Haloperidol." Patient X says: "I have had Haloperidol before. I do not want it." The doctor says, "I am going to impose it on you."

Do you agree with that scenario or do you disagree with that?

Mr. Higgyins: Given the information that I have, I would say we would disagree.

Mr. Reville: Has that answered the question yet?

Ms. Hart: No, it does not.

Mr. Reville: Should the doctor be able to impose that particular treatment on a patient against his or her will? I think that is the crux of this discussion.

Mr. Chairman: One of the difficulties, of course, is giving supplementaries to other people's questions. Sometimes it is a very difficult thing to arrange. Would you like to try to ask one final thing to clarify your position, Ms. Hart, before we move on?

Ms. Hart: I think the position has been made clear.

Mr. Chairman: I am glad. Thank you for both for coming today and participating with us.

Ms. Kydd: Thank you very much.

Mr. Chairman: I would remind members that we had agreed to try to limit ourselves to a question or so per group. We are now running 15 minutes or 17 minutes behind. I would ask representatives from On Our Own to come forward. Mr. Braithwaite, Irit Shimrat, Ryan Scott and Don Weitz.

All right. Just sit yourselves down anywhere you would like. There should be a microphone in front of each of you. Perhaps for purposes of Hansard and for the TV recording of this, you might identify yourselves before you start and take us through your brief any way you would like. Why do we not start from this end on or however you would like to do it?

ON OUR OWN

Ms. Scott: My name is Ryan Scott. We are here today as members of On Our Own, a self-help group of former psychiatric patients. We speak as individuals who have been subjected to psychiatric treatment and incarceration against our will.

Bill 190 is so heinous, so violently at odds with basic human rights, that my outrage tends to choke me. It appears as if the Charter of Rights has been burned. It was certainly totally disregarded in drafting this bill. Among other things, this bill allows for a review board appointed by the Ministry of Health to overrule a competent refusal of treatment by someone incarcerated in a psychiatric institution.

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Let us make clear what psychiatrists mean by "treatment." They do not mean simply having a pleasant little chat about your difficulties. They mean filling you full of mind-altering drugs, if necessary against your will. The most popular drugs among the psychiatric set are the neuroleptics. The Physicians' Desk Reference lists dozens of side-effects from these drugs, among them sudden death. Of course, no one here should have to be reminded of that side-effect after the inquest in 1980 into Aldo Alviani's sudden death at Queen Street Mental Health Centre at the age of 19. He died from the forcible

administration of these same drugs. His death by "therapeutic misadventure," as the coroner quaintly put it, was not unique. Many people, while under the tender ministrations of psychiatry, die while on adventures they did not willingly embark on.

I was almost one of those. At the age of 15, I was confined to Ontario's pre-eminent psychiatric teaching hospital, the Clarke Institute. Although a minor, I was incarcerated in an adult ward. Within a few hours of arriving, I was injected with a large amount of a neuroleptic. I was not informed of what the drug was intended to do or what side-effects or risks were involved. In short, neither I nor my parents were consulted.

Almost immediately I became confused and disoriented. I could not stand up or indicate that I needed help. My breathing started to fail and I fell unconscious. To save Canada's premier teaching hospital embarrassment--and incidentally to save my life--a staff member acted quickly and injected another drug to counteract the effect of the first. My parents were initially told by the staff that I had had an allergic reaction. When they questioned that explanation, the doctor admitted that perhaps he had misjudged the dosage.

I remember my father entering the room in which I was confined and screaming about chemical straitjackets. He was told it was obvious that I was afraid of him and that his presence was untherapeutic and he was forbidden to visit me again. I was terrified. I felt helpless and abandoned and I feared that if they did not kill me, they were sure to permanently damage my brain. Although my fear was justified, I was labelled paranoid and this was used as an excuse for further treatment and incarceration. I was labelled schizophrenic and told that I would be so for the rest of my life.

I was also told that I should quit school, even though I was an honours student with an average in the high 90s. Luckily, I had learned not to believe everything I was told and I quickly learned how to lie for self-preservation. I thanked the good doctors for their help and their drugs. Their egos sufficiently stroked, they eventually let me out. I have never looked back, except nervously at times like this.

If Bill 190 becomes law, competent people will be held against their will and forcibly pumped full of powerful drugs. Surely, the decision to take such a risk should be made by the person affected, the person whose mind and body may be permanently damaged. If this bill becomes law, that decision will be made by psychiatrists. This is a clear conflict of interest, as psychiatrists have the reputation as practitioners of science to uphold, and their living to make, from treating patients.

Psychiatrists have perceived Bill 7 becoming law as a threat and have brought great pressure to bear on the government to enact Bill 190. We should remember that Bill 7 was meant to bring the Mental Health Act closer to the Charter of Rights. Is it not odd that rights for their patients are perceived by psychiatrists as a threat to their power?

Power is a major issue here. Doctors have the power to influence governments to enact legislation. Their will becomes law. Their patients do not have that power. We can rarely influence or even access the judicial or legislative system. Patients are not a pressure group. This arrogant, dictatorial piece of legislation fails to address the tremendous power and balance between psychiatrists and those subject to their control. The majority

of psychiatrists are white middle class males. Those whose bodies and minds they seek to control are frequently women, minorities and the poor.

When individuals are confined against their will, whether the purpose is supposed to be treatment, rehabilitation or simply punishment, it is imperative that their human rights not be further violated. We now have the very real possibility that people espousing unpopular political beliefs who run afoul of the law could end up remanded to a psychiatric hospital, their competent refusal of treatment disregarded and forcibly administered dangerous drugs, all by the state in the name of therapy.

Ms. Shimrat: My name is Irit Shimrat and I am also from On Our Own.

A coercive environment is not therapeutic. Forced treatment creates helplessness, panic and finally rage; hardly therapeutic effects. Force is not conducive to faith and faith is all that can make psychiatric treatment work. The shrinks always tell you that you are going to thank them for this when you get better. The fact is that until you are thanking them, they are not going to let you out. So you learn how to lie; how to disguise your rage.

Before they release you, they have to deem you competent. Bill 190 defines competency as requiring that the patient understand the nature of her or his illness and the nature of the treatment proposed, as defined by the psychiatric profession. That means that if you know that you are not ill and that the so-called treatment to which you are subjected is dangerous, you are automatically deemed incompetent. In Brian McKinnon's accurate analysis, "Competence is just a pretty word for compliance."

A psychiatrist who does not like your face, your race, your politics, your sexual orientation or any aspect of your lifestyle can get you ruled incompetent if you disagree with anything he or she says.

The idea that mental patients are more dangerous than their captors is absurd. One need only observe the practice of institutional psychiatry to see clearly that the sole purpose of all psychiatric treatment is to crush the will and induce passive conformity. People who have been in the hands of psychiatrists for any length of time often cannot fight their way out of a paper bag, much less endanger themselves or others.

Many who survive neuroleptic treatment suffer from irreversible brain damage, including tardive dyskinesia, another known side-effect of neuroleptics. This condition is characterized by uncontrollable convulsions of the face and limbs, sometimes accompanied by drooling and other unsightly manifestations that that by making the patient look crazy, seriously impair her or his ability to find housing, employment or social acceptance.

Although psychiatric patients may well become suicidal, it is unlikely that we will have the wherewithall to kill ourselves, except by overdosing on the drugs we are supposed to stay on for ever. This danger, and indeed the urge to commit suicide, can be solved by getting us off the drugs and away from shrinks.

Psychiatrists are cops and jailers whose tools of oppression are electrical torture and nerve poisons rather than bludgeons and guns. Giving them more power than they have now over people's bodies and minds protects psychiatry and multinational drug companies at the expense of those supposedly being helped by these industries.

The idea put forward by psychiatrists that mental patients whom they are not allowed to drug forcibly will be warehoused and languish without treatment is ridiculous. My own experience at Branson Hospital in North York and Mount Sinai Hospital in Toronto would certainly not have been the near-fatal nightmare it was had neuroleptics not been forced on me. In fact, if I had been locked up and talked to, rather than locked up, sat on, tied down and shot full of drugs, I might even have been fooled into thinking that someone there wanted to help me.

In 1979, Dr. Roxanne Bukari at Mount Sinai told me that if I did not take neuroleptics for the rest of my life, any time I was under stress I would have another psychotic episode. I have no doubt that if I had believed this, I would have tardive dyskinesia now and would not be here talking to you but would be locked up in a provincial facility for hopeless cases. Being in the care of shrinks and their minions is by far the most horrifying thing that has ever happened to me. Any stress I have experienced since is negligible in comparison.

Bill 190 serves only to give more power to people and institutions that already have too much. Its original clause, now removed and called a "mistake," I believe, dictating that former patients and outpatients be subject to forcible treatment was clearly included only to be rescinded in order to make this senseless, repressive piece of legislation look more palatable.

This is an intolerable insult to our intelligence. Bill 190 must not be passed because it is nothing more than a blatant grab for power by the psychiatric industry.

Mr. Chairman: Does anybody else wish to make a presentation, briefly?

Ms. Braithwaite: I would just like to voice, as a member of On Our Own, that I feel a person should have the right to refuse treatment, because I do not understand whether you are really trying generously--in recognizing there are individuals, professionals, working in the the hospital system, I do not really understand whether their interest in me is genuine, in a sense, or whether they want to muzzle me because it is the acceptable thing to do and is the procedure that is followed through.

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I am confused about the use of the power with which you are treated as a client. I fail to understand the helping model where counselling and individual interaction is put on the back burner and drugs are proclaimed as the total answer to a particular person's problem. I want to decide whether I want to take drugs. I feel that right should be a choice for everybody--to have the choice of whether he wants to take the drug or not. To have it forcibly administered against your will is not right. I want the right to decide what I put in my body. Just as the food I choose in the street, I would like that choice when I choose to go for help.

That is all I have to say.

Mr. Chairman: Don, did you want to add anything?

Mr. Weitz: My name is Don Weitz. I am a member of On Our Own and I am very proud to be here with my sisters. As Ryan Scott has said, I have a lot of anger that I am trying to control for the sake of the civility of the

proceedings here. I have a lot of rage and I do not apologize for my rage. This piece of legislation, so-called, is a direct insult to psychiatric inmates and all future inmates. It is also a clear violation of section 15 of the Charter of Rights because only psychiatric inmates, and no other class, in Ontario and other provinces can be treated against their will. Whether you know it or not, that is a fact.

Like my sisters here, I have a fair amount of knowledge and anger stemming from my own personal experience in a psychiatric institution where I had no rights. This was 30 some years ago but I had no rights then, just as psychiatric inmates today have very few, if any, rights. The so-called rights that are given or granted to them by patronizing bodies can be taken away just like that and have been. Besides, psychiatric inmates are routinely not informed--emphasis "not informed"--of their rights, and if you do not know your rights you cannot assert them.

I was locked up for 16 months because I was schizophrenic. In reality, I was nothing of the sort. I was an angry young man like thousands and thousands of other young people at the age of 21, rebelling against my parents' values. That was a reality, just as it is today for many people. I was angry. I was angry and I was mouthing off; not violent.

What was the result? Being referred to a psychiatrist. Being referred to what was then called the "closed institution," one of the most prestigious ones in the United States, the McLean Hospital, and forcibly subjected to one month of that was masquerading as treatment. At that time it was called insulin shock. It was used in Canada, as you know, and the United States and Europe until the early 1960s. It was banned because a lot of people were dying from it.

I got out. First, I was not told I was going to go into a coma, just as people subjected to psychiatric drugs and electroshock therapy today are not told about brain damage and permanent loss of memory, which are routine, direct effects, not side-effects. Let us not mystify the effects. When I finally deprogrammed myself from the psychiatric treatment, which took me 15 years, I started to feel angry again. What did the treatment do? It suppressed my anger. I got out because I agreed to conform and go back to college.

This bill is an atrocity. It legitimizes assault. That is just for starters. When you touch me, put a needle under my skin or zap my brain after I say no, that is an assault under the Criminal Code. Those of you who are lawyers, even people who are not lawyers, know that much. This is what the bill does. This is what you are doing. You are saying it is okay for doctors to assault people, although of course the word "assault" is not mentioned in the law; we cannot be as honest as that. But what do you call forcible treatment?

If this bill is passed, the government of Ontario will be guilty of legalizing assault against a class of people, legalizing assault against one class but no other class. We will violate section 15. I strongly resent Mr. Elston--if he were here I would tell him to his face--knuckling under to the lobbying of the psychiatric wing of the Ontario Medical Association and the Ontario Psychiatric Association, who were too threatened, as my sisters have pointed out, by Bill 7 which would finally bring us out of the middle ages as far as rights for psychiatric inmates are concerned and into the 20th century.

This was too much for the psychiatrists because they have never perceived us as equals. We are sick and tired of being their slaves and guinea

pigs. I was a guinea pig and everyone here in front of you was a guinea pig and we had no rights then and we still have no rights because no one damned well bothered to tell us our rights. That is going to change.

I do not like psychiatrists deciding whether we are competent. Competence is not a medical issue. It is a social, legal concept. Why should psychiatrists, my treating psychiatrist in the past, decide whether I can say yes or no? But it is in this bill. It was in the Mental Health Act. There is a conflict of interest.

By the way, if I or anybody here should ever be declared incompetent, I want to decide who can consent for me. I am not going to go by your shopping list of priorities, of who you think is qualified to consent or to reject the treatment for me should I become "incompetent." The individual should have the right to decide and name who he wants. If I want Dave Reville to have that power, fine. He is a brother and I trust him.

But I do not trust my family. Under this bill, you have to go to your family first should you become incompetent. It was my family who put me in, in the first place. Why should I trust them?

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Finally, I just want everybody here to know that 15 years ago I declared war on psychiatry. If you think I am the only one, you are mistaken. We are not alone. We are part of a movement around the world called the psychiatric inmates liberation movement that is against any coercive form of treatment or intervention. If Bill 190 gets passed, I guarantee that the war is going to heat up. That is all I have to say. It is guaranteed.

Mr. Chairman: You have been here for other segments of the battle. You have been here before. It is good to see you again.

Mr. Callahan: Having heard what you said, and also having heard what the Ontario Friends of Schizophrenics said, there may be differences here that we are addressing. I am satisfied from hearing the Ontario Friends of Schizophrenics, and also from professional experience as a lawyer with people who are schizophrenics, that there is a very definite need that there be someone there who can say, "You have to take this," because the very nature of the drug is what makes them better. If they fall off their drug they become paranoid and they will not take the drug, and they create a danger for themselves as well as for their families. But quite apart from that, you have seen the legislation, I gather?

Mr. Weitz: Are you asking that of all of us or just me?

Mr. Callahan: Any one of you who has seen the legislation. I gather you have all seen it, have you? You are aware of the factor that under subsection 35a(4) the wording that is used is: "The review board by order may authorize the giving of the specified psychiatric and other related medical treatment if it is satisfied...."

And I underline the word "satisfied" because legal interpretation of the word "satisfied" has been the criteria of beyond a reasonable doubt. It is the wording that is used in criminal statutes, the word "satisfied."

In essence, the onus that would be upon the evidence before the review board, if I am correct, would have to prove beyond a reasonable doubt two

things: first, that "the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment; and"--not "or" but "and"--"the mental condition of the patient will not improve or is not likely to improve without specified psychiatric treatment."

It is a very significant onus that this bill places upon the review board in determining whether treatment can be given without consent.

In addition to that, the bill also contains an appeal procedure which says that if an appeal is launched the treatment cannot be forced on the patient until the appeal decision has been rendered. The appeal decision would have the benefit of mandatory reasons. There have to be reasons given by the psychiatrists who state that they have met the test of satisfying those two things that I just read.

In addition to that, another safeguard is that the psychiatrist who files the affidavit cannot be the same psychiatrist who is treating the patient.

So I suggest to you that there are four clear areas there that protect the rights of people who are going to have treatment forced on them. I would just like to draw your attention to those because I think they do go a significantly long way toward protecting.

Ms. Scott: I would like to say a few words to that. One is that the review board hearing is not a court of law, so the same criteria that must be met in a court to sentence someone must not necessarily be met by a review board. It takes very little to convince psychiatrists of the validity of a treatment that they want to use. The review board is made up of a psychiatrist, a lawyer, and a lay person. It is a three-person review board.

Generally, the people who are making the decisions about whether this treatment is the best way to go are people who believe in that system. They are not the ones whose bodies and minds will be affected by the chemical that they are prescribing.

I do not think that those are safeguards at all. In terms of being able to appeal the decision and then appeal again to a Divisional Court--which, of course, you can do--generally the people that psychiatrists are treating, as I said, are members of minorities, are women and are generally poor.

Poverty is a major issue here. They do not have the same knowledge of procedure, procedural amendments and the workings of the judicial system that the people who drafted this legislation have and the people who are going to use it to force treatment on individuals have. The fact that it is a different psychiatrist making the decision is no safeguard. All psychiatrists basically believe the same things. They believe that the type of behaviour that they are seeing is a bad thing--not just that it is bad, but that it is an illness--and that the way to treat this illness is by giving neuroleptics or by giving electro-convulsive therapy.

Why, in fact, did they make a special case of ECT? Your own government has said there is no reason to make a special case of ECT, the ECT review committee. They also went on to say that no psychiatric treatment should be forced on a competent patient. The guardianship committee is likely to make the same type of recommendation.

Mr. Weitz: May I add one more thing to what Ryan just said, very

fast, because I know the time is up and there are other people who want to talk. These drugs, this so-called medication, we are not talking about Aspirin here. We are talking about what we have experienced as chemical lobotomies which have direct effects--we have already mentioned some of them--like tardive dyskinesia affecting 20 per cent to 40 per cent of any hospital population. That is permanent brain damage. Twenty-five million people now have it around the world, according to the best estimate by some mental health professionals in England.

That is one of the side effects that can create as much, and sometimes more, brain damage than electro-shock if you are on it for three, four or five years at a time.

I have a friend in Queen Street Mental Health Centre now who I am sure is brain-damaged by the drugs which he at one time tried to get off, but which the psychiatrist forced him to keep taking. Force. Force, fraud and fear, the three Fs of psychiatry. That is what has been legalized here and that is what we strongly object to. I am sure when you hear from the Advocacy Resource Centre for the Handicapped or some other lawyers, they will tell you also, in their own words, that they do not like force either.

I repeat, why should people be singled out for special treatment the way the Nazis singled out the Jews? That is the way the psychiatric inmates are being given special treatment. Torture is what we have experienced.

Ms. Scott: What I am saying is the fact that these drugs are effective. The fact is a lot of people like the effects of brain damage. It helps you to handle poverty. It helps you to handle your rage. It helps you to handle the fact that you cannot get decent housing, that you cannot get a decent job because you have been labelled schizophrenic. When you live in these crummy boarding homes and eat starch three times a day, brain damage is a tremendous help. It helps people handle the 20th century. That does not mean it is a good thing to do to people.

Ms. Shimrat: I would like to add that I think the notion that it has been proven that these medications will do good can be proven to a review board appointed by the Ministry of Health, but I do not believe that it can possibly be proven in fact. It can be proven to people who are interested in proving it so.

Mr. Chairman: I need the committee's guidance here. We are at 11 minutes to six. Other people may have questions and we have ARCH still wanting to come before us. What do you want me to do?

Mr. Reville: Do not see the clock.

Mr. Chairman: It will create some problems for some members who are not going to be able to stay. If others can, then let us proceed and understand that not all members can stay past the clock.

Ms. Hart: I, unfortunately, cannot stay tonight. I am willing to perhaps come earlier the next sitting day and perhaps have it at 3:30, but tonight, unfortunately, I cannot alter my schedule.

Mr. Chairman: We cannot guarantee that we will ready at 3:30, given orders of the day. I think our only option, given the time constraints we have, is to continue as we are. I think what that means is I am going to have to cut off On Our Own at this point. I am going to call ARCH up, if it is all right. Thank you all very much for your participation and for your help.

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ADVOCACY RESOURCE CENTRE FOR THE HANDICAPPED

Ms. McKague: We had originally planned that our president, Richard Santos, would be here but he has been delayed so I am on my own. My name is Carla McKague and I am head of litigation at the Advocacy Resource Centre for the Handicapped. I think pretty well all the committee members are familiar with ARCH, so I will say no more than that we are a legal aid clinic providing various kinds of legal service to people with handicaps, including as a specific part of our mandate people with emotional handicaps, which is of course the issue on which we want to talk to you today.

I wanted to start out first of all by expressing support for certain parts of Bill 190, particularly in light of the amendments proposed by the minister, which had been handed out to committee members today. Certainly we are very happy to see the removal of the power in the act to impose treatment on former patients and outpatients.

The act deals also with substituted consent for voluntary patients who are incompetent. With some reservations we want to express our support for that provision, in light of the minister's amendment which would provide for such patients to have their incompetency finding reviewed by a board. The way it was originally in the bill of course where if you were a voluntary patient and your doctor said you were incompetent you had no way to challenge that. That was totally unacceptable to us.

I want to make it clear what my reservation is on this point. The reason we support this in principle is that it is our experience that there are many patients, both voluntary and involuntary I might say in psychiatric facilities, who any judge would have considerable difficulty finding competent, but who are treated as competent at this point by doctors and given drugs because they are not protesting. We do not believe those people's rights are being protected. There is no informed competent mind examining whether or not that person should receive treatment or that specific treatment. The doctors have been in a bind with the voluntary patient because if they declare the person to be incompetent there is no legal way of providing treatment.

We are pleased to see a mechanism by which a voluntary patient can have a substitute consent given by someone who is in a position to make a competent decision about the treatment. I am going to suggest to you, however, that you consider strongly when you get to that part of the bill taking a look at the provision the way it is because the way it is now it provides that if your doctor finds you incompetent you can ask the board to review it. It does not provide for the situation if a doctor finds you competent when you are really not. I would like to see a provision whereby a family member, a friend, a patient advocate, could go to the review board and say, "Just a minute, I was in to see Aunt Minnie today and she is so far out of it she does not even know she is in the hospital, but she is taking her pills and the doctor is treating her as competent. I do not think she is, can I have the board look at the issue and perhaps put me in as a substitute decision-maker for her?" I draw that to your attention as a serious problem.

We strongly support the proposed scheme for people incompetent to name a representative to take over the task of making treatment decisions when people become incompetent. We see that as extremely respectful of people's autonomy,

of people's rights to make decisions in advance to provide for themselves. If you can decide what is going to happen to your body after you die, certainly I think you should be able to decide what is going to happen to it when you are alive but temporarily incapacitated from looking after it personally.

We are delighted to see the amendment that the minister is bringing forward which would counteract the automatic fall back on family members if you had not named a representative and would give you an opportunity to go to the board and ask the board to consider that. This is for a number of reasons. Often we find family members not to be the most appropriate decision makers because perhaps of conflicts within the family. The pressures on a family member can be very difficult and they may prefer to avoid the responsibility and there are various reasons for not having an automatic fall back on family. I would anticipate by the way that the vast majority of people would in fact choose family members, but that puts the family in a much better position.

Of course, the main point on which we are before you is the provision in Bill 190 that gives back to the review boards the right to override a competent decision, whether by the patient himself or, if he is less than competent, by his nearest relative. I cannot put to you too strongly our opposition to this. Don Weitz earlier spoke of section 15 of the charter, and that is very much ARCH's position.

We recognize that in the case of a psychiatric disability there are special problems. A person who is having extreme emotional difficulties may in fact have his ability to make decisions impaired. I say may; not necessarily does, but may. That may be significantly impaired. In our view, that is the reason, and a valid reason, for having provisions in the Mental Health Act about deciding whether or not people are competent to make decisions. If one is interfered with by a delusion or if one is right out of it, not thinking very clearly, that properly is appropriate to determining whether or not the person is competent to make a decision. It then becomes irrelevant.

If there is a decision that the person is competent in spite of the mental disorder, ARCH and our allies see no reason at that point to go back and say, "We have you through hoop one; the mental disorder does not make you incompetent, but now we are going to say, in spite of that, the mental disorder still prevents you from making a decision." That simply does not make sense. If you have been found competent, you should have the same right to make those decisions as someone suffering from a different disorder.

If you have been found incompetent, we believe this bill, as amended, provides a satisfactory mechanism for having someone else make that decision on your behalf, and there is no reason the board should interfere with that either.

The difficulty we keep hearing expressed is that doctors have been stating: "What you are going to do is you are going to put us as doctors in an impossible position. We are going to have hospitals full of people whom we cannot discharge because they are really dangerous and whom we cannot treat because they are saying no. We are going to have warehouses full of people."

We have done as much research as we have been able to on this. We have looked at the experience in other jurisdictions and we have looked at the figures of what is actually happening in Ontario. The best index we can get of how many people we are talking about here to start with is how many times in

the last year a doctor has actually gone to a board and said, "Override this patient," or "Override this patient's relative."

The statistics have not been properly kept. They are muddy. We have been gathering them from various sources. The best we can do at this point is to tell you with 99 per cent certainty that we are talking about fewer than 40 people a year. There are more hearings than that, but some of those have been in respect of incompetent patients who do not have a nearest relative, so we are not talking about overriding in those situations.

Also, almost without exception, those hearings are for neuroleptic drugs. In the provincial psychiatric hospitals, in a 10-month period, there was only one treatment hearing that was not for neuroleptic drugs. That was for ECT. So what we are really talking about here is neuroleptics, and we are talking fewer than 40 people a year where the doctor feels it is necessary to override the person or his substitute decision-maker.

The experience we have in other jurisdictions from the sociological-psychological literature is that in the vast majority of cases, people who begin by refusing change their minds and consent within two to three days. People who refuse have their hospital stay increased on the average by 17 per cent, and there is no greater need for physical restraints or seclusion. People who refuse, in fact, have a longer period out of hospital before being readmitted. I have talked to doctors who admitted frankly that there can be highly therapeutic elements in refusing treatment. It can remobilize you, particularly if you are depressed. You can be active resisting, and making up your mind can assist you in improving.

What are we looking at? We are looking at a situation where probably 40 people a year will refuse treatment, where within two to three days the majority of those will come around and say yes, where the rest will have a lengthened hospital stay. In my submission to you, we are talking about a problem, from the doctor's point of view, of extremely small proportions.

1800

You may say, "Well then, why are you so concerned about it if it is only 40 people a year." I tell you frankly that I am concerned about it because other than the legal principle, the equality issue that we are raising, I have seen devastating effects on people--I see it all the time in my practice--who have been forcibly treated and who, years later, are filled with rage, anger, humiliation and shame.

I had a client come to me a couple of months ago whom I represented first seven years ago, and I had advised him seven years ago on the basis of what had happened to him, but he had an assault action against a physician. He chose at that time not to proceed with it because he was just out of the system and he wanted to bury it and get on with his life. Seven years later, he is still haunted by that experience, by the humiliation and the degradation of what he went through.

It does terrible things to people's minds, and the analogy I hear most often is rape; that it is like being raped. Someone holds you down and does something to your body that you do not want done.

I ask this committee to consider very seriously whether we want to pay

that kind of price for the purpose of getting half a dozen people out of hospital five days earlier.

I would like also, just very briefly because I know time is tight, to respond to something Mr. Callahan addressed to the people from On Our Own about the safeguards that are provided in review board hearings. I do not know if legislative privilege applies to people addressing you. I hope it does, because I may be about to commit libel or slander or some such offence.

Mr. Chairman: No, it does not. You should be careful.

Ms. McKague: I am going to take my chances anyway. In my work, I have an opportunity to observe very closely the kinds of jobs the review boards do. I read decisions all the time. I see the level of evidence that is presented before the boards. I see the conclusions that come out of those hearings, and I have to tell you, Mr. Callahan, that you would be safer in a tank of sharks.

The review boards, with a couple of noteworthy exceptions, are almost without exception simply rubber-stamping doctors' decisions. They do not look at the evidence; they do not weigh the evidence; they do not go through the proper legal steps. They get together, they sit around, they listen to people, and the rate is 95 per cent of the doctors' decisions are upheld, on treatment hearings, on commitments, on competency. One in 20 patients is successful.

I have to tell you that I used to complain a lot about the old review boards, but they agreed with the patient an awful lot more than the new ones do. I kind of wish for the old days every now and then, because what we have is people who are not yet experienced with the system, who are caught up in the purpose of the review boards being to look after people's interests rather than to apply the law. I do not care how many safeguards you put in this act about how they are going to make a decision, you are still going to get a great many people not properly protected by that system until the review boards learn to do it right, and I think that is very important for this committee to be aware of.

Last, there was a mention earlier of something I had also heard, which is that the minister is planning to look at the issue of competency. That is crucial, vital, absolutely has to be done, because nobody knows what the definition in the Mental Health Act means. I should add that the doctors have only just figured out they do not know what it means. They have been supposed to be using it for 300 or 400 years. Finally, when somebody started checking on them, they admitted they are not quite sure how to apply it.

So I agree heartily with that endeavour, with two caveats. The first is that we should not hold up on other reforms and other rights for people in order to clarify what competency is, because you know as well as I do the history of committees that get set up by ministers and report seven, eight nine, 10 years later. In 1978, when you amended this act, you set some amendments aside for later proclamation and it took six years.

I do not want to see the right of people to make their own decisions await a committee deciding what competency means--that is my first caveat--because it could take for ever. I want to caution any such committee and any of you who get involved in that process that what the minister is looking at doing is explicating and clarifying the definition of competency. I am heartily in favour and would be willing to do anything in my power to assist. If what he is looking at is writing a special definition of competency

for psychiatric patients, that is a whole other ball game, and I think we are right back into section 15 of the Charter of Rights problems again. The definition is adequate; we just have to have it operationalized.

My final statement to you on this whole subject is that if you have a person who, in the words of the act, is able to understand the subject matter in respect of which consent is required and has the ability to appreciate the consequences of his decision, then there is no way on earth that anybody ought to be able to override his decision.

Mr. Chairman: Thank you, Ms. McKague.

Mr. Reville: Absolutely, Mr. Chairman. I agree totally. Next.

Mr. Callahan: I just want to ask you whether you agree with my submission to the former group that subsection 35a(4) use the words, "it is satisfied that"?

Ms. McKague: No, I do not agree with you. In fact, I was looking up the point last week in connection with an appeal I was arguing. The jurisprudence in this area very clearly indicates that "satisfied" means on the balance of probabilities. It is not beyond a reasonable doubt; would that it were.

Mr. Callahan: I will not challenge you, because obviously you have looked at it more recently, but my recollection of looking at cases was that "satisfied" meant beyond a reasonable doubt. There is another word which is used which means "on the balance of probabilities."

Ms. McKague: I would have been arguing it in Barrie last week if I had found that the jurisprudence took that view.

Mr. Callahan: What is the word that jurisprudence uses? What would you prefer to see there that would put it on a balance of probabilities?

Ms. McKague: I would like to see "satisfied beyond a reasonable doubt." I think that is the clearest way of doing it. If you do it that way, that is just fine.

Mr. Chairman: We will be expecting that amendment from Mr. Callahan as we move along.

Ms. McKague: I will welcome it.

Mr. Chairman: Are there any further questions? Thank you very much, Ms. McKague. As usual, the Advocacy Resource Centre for the Handicapped is a helpful resource to us as well.

The committee adjourned at 6:08 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

MENTAL HEALTH AMENDMENT ACT

MONDAY, JUNE 1, 1987

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitution:

Reville, D. (Riverdale NDP) for Mr. Grande

Clerk: Carrozza, F.

Witnesses:

From the University of Toronto:

Rakoff, Dr. V. M., Chairman, Department of Psychiatry

From the Ontario Psychological Association:

Evans, Dr. D., Chairman, Legislation Committee

From the Canadian Foundation for Children and the Law:

Weagant, B., Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, June 1, 1987

The committee met at 4:02 p.m. in room 151.

MENTAL HEALTH AMENDMENT ACT
(continued)

Consideration of Bill 190, An Act to amend the Mental Health Act.

Mr. Chairman: I call the meeting to order. This is the meeting of the standing committee on social development of the Legislature.

We presumed we were going to skip a deputation here, but I see that Dr. Rakoff has arrived, so I will ask the clerk to just check to see whether he would like to wait a half hour or how we would like to go here.

We are dealing with Bill 190, An Act to amend the Mental Health Act, which has to do with the question of the rights of mental patients in our institutions. We will have public hearings for the next few days.

Our first deputant this afternoon is Dr. Vivian Rakoff of the University of Toronto department of psychiatry. Welcome, sir. The process we follow is for you to make your presentation any way you would like, and then I open it up for questions from the members following that.

DR. VIVIAN M. RAKOFF

Dr. Rakoff: Thank you for this opportunity. As you know, I come from the University of Toronto. The issues I am going to address have certainly been put before this committee and the minister in terms of numerous letters that I have seen copies of, so I am going to have to repeat some of the content of this, but I hope not at great length. I would like to place matters in some kind of context, if I may for a moment, and I hope it will be perceived as relevant.

I am concerned that university psychiatrists, care givers, may, in the cause of an essentially progressive bill--it is something we agree with in the main--be forced into a curious situation in which a fundamental good or purpose of medical care may be subverted by some other good; namely, a concern with the liberty of the individuals. This is clearly a good to which we all subscribe, but it is also clear that the caring for people who are vulnerable for one reason or the other is a perennial concern of medicine at its best.

Society as a whole has often suspended notions of freedom and individual liberty for the good. One is not free to pollute the waters. One is not free to have a butcher shop that will sell polluted meat. One is not free to go untreated if one has a notifiable venereal disease. One is not free in this province to drive one's car without a seatbelt. I realize these are both frivolous and extreme in their range.

We are caught in a paradox by one provision of the proposed act that essentially subverts the intention of medicine, which is to aid, to relieve suffering and, where possible, to cure. I am, of course, speaking to the

subsection concerned with the difficult problem that a formerly competent patient who is involuntary may essentially be able to reject professionally-agreed-upon good treatment for the condition. These are conditions which I may say, if the members of this committee or the public had to see in full display in a clinic, would lead to many of the abstract arguments being suspended. One may have human beings in a state of despair or violence, potentially directed at themselves or others, who are technically competent but who, by the nature of their condition, I submit, cannot really appreciate what treatment will do for them.

I suppose it is significant that those who have to care for individuals in such situations are deeply concerned about the provision of this proposed legislation, whereas those who rarely have to deal with people in such situations prefer the alternative and very understandable good of a respect for liberty. But the respect for liberty then denies the exercise of informed altruism, which is an essential component of medicine.

While I know the suspicion, the appropriate suspicion, which surrounds a kind of ex cathedra authority, the fact is that the people who are most experienced in dealing with these matters tend to be well-trained physicians, nurses, psychiatrists, etc., who will be deprived of the opportunity of relieving the pain of such an individual and be transformed, as you have seen in many of the submissions that have come before this committee, into jailers.

There is a further problem in that should such individual proceed to be violent--I have just come out of the side entrance of the Clarke Institute of Psychiatry and I am vividly reminded of the degree of violence that can occur in a psychiatrically disturbed patient; I passed through four major sheets of plate glass and doors and windows that were shattered by someone over the weekend--such an individual, instead of being treated, if he refuses treatment, would be criminalized.

There are, as you know, social critics of psychiatry who agree that this might be a good way of doing it. I must distance between myself and the university community from this position, which is essentially enunciated by Dr. Thomas Szasz, that the only way of dealing with such a person is to bring the criminal justice apparatus of society into play, and instead of being treated--that is, in a decriminalized, compassionate, non-value-judging situation--such a person goes through the court system and is perceived as destructive, etc.

In short, and without labouring the matter too much, in the last 20 years we have had examples in which a rhetoric of "liberalizing" has led to the neglect of patients. The opening up of institutions, with which I am personally, and speaking on behalf of the university community, totally in favour, came about without any concern for the fate of people so released into what was spuriously called the community when in fact we do not have the kind of community that looks after people when they have been abandoned into the streets, not into a community.

Paradoxically, we find that the hospital, in this situation I am speaking about--which I think will be fairly rare, but when it happens--is horrifying. I believe the ways around this are to alter our notions of competence into a wider definition for purposes of allowing proper care to be given to sufferers and by making sure that when other parties are called in to rule upon the competence of such a person facing treatment or lack of treatment, they should be immediately available.

Review boards tend not to be around at 3 a.m. and advocates are rarely around at 3 a.m., particularly on a Saturday. In particular, one has caregivers facing potentially destructive people or suffering people whose competence is recognized but who are involuntary, which is paradoxically a recognition of noncompetence, without being able to do anything for them except in holding on to them, which is a reversion to the worst kind of institutional care for psychiatric patients that existed in the 18th century and the 19th century, before the recent era.

That is my submission, Mr. Chairman.

Mr. Reville: Dr. Rakoff, could you tell the committee how often you find it necessary to get a treatment order for an involuntary competent patient?

Dr. Rakoff: As I said, this is a rare event. I do not have the statistics, but I can give you the accumulated wisdom that, out of the letters I have looked at, every one of them contains a specific instance. I am afraid the statistics in this instance would not give you any clue as to the nature of the problem. It is the old medical problem: "Why should I bother to know about that? It is a very rare condition." To which one of my own tutors once replied, when I was younger, "When it's you, boy, it's one out of one."

I think even to consider this in terms of frequency is to neglect the core problem involved here. Even if it is once a month or once in two months, in one institution or across the province, it means there is a likelihood that there is one person a week who may be in such a situation. That one person represents potential human and medical tragedy.

Mr. Reville: If the committee decided that forced treatment of an involuntary competent patient was inappropriate, how would you as a psychiatrist deal with that situation?

Dr. Rakoff: I have a serious answer and a frivolous one. The frivolous one is, alas, the one that comes to my mind through the experience of people, and I will mention it. It would probably be to call someone at the ministry, or perhaps an MPP, and ask for advice on what to do at that moment.

Mr. Reville: You may call me, if you wish.

Dr. Rakoff: At three in the morning?

Mr. Reville: Absolutely.

Dr. Rakoff: Without, I hope, being disrespectful, I presume that your knowledge of clinical psychiatry and the latest treatments is equal to that of a psychiatrist who has undergone four years of specialized training post-medicine, that you are fully aware of side-effects and consequences and would be prepared to accept the responsibility for handling the person at that moment.

Society operates, as I am certain I do not have to inform you, on all sorts of delegated authority. Indeed, we give it to our politicians a great deal of the time.

Mr. Chairman: That is one of the failings of society, in my view. But you had a more serious response to that.

Dr. Rakoff: Yes. My serious response is that people are then left in the position simply of holding somebody, with the hope--I mean holding not in the physical sense, but it may come down to that--of simply preventing such a person doing harm to himself or others in that situation. That is, in the old-fashioned sense, pure custodial care, which is what bedevilled the old mental hospitals and produced the disgraceful situations to which the recent changes in attitude were the response.

Mr. Reville: Does that not presuppose that none of the menu of treatments you have would be acceptable to this person?

Dr. Rakoff: You are putting a hypothetical question to me.

Mr. Reville: Absolutely.

Dr. Rakoff: In that hypothetical situation, I can assure you that responsible and competent professionals will parade what you call the menu before the patient whose competence at that moment may be legal and may be technical, but may not in fact relate to his degree of appreciation of what is available and would produce intense delays. Under the guise of being a concern for that individual through an altruistic device, it is essentially an act of social cruelty in denying the person an exit out of the kind of suffering which I suspect very few people who have not been in a psychiatric emergency department late at night have ever encountered.

Mr. Reville: Would you agree that many of the tragedies that do occur that are related to a mental illness in fact occur outside the hospital, when a person is not under inpatient care?

Dr. Rakoff: I am afraid I do not understand your question, sir.

Mr. Reville: You pointed out that the rhetoric of liberalization--I assume by that you include the patient liberation movement rhetoric as well as the deinstitutionalization rhetoric--has resulted in neglect of people with mental health problems, because the community mental health system is inadequate.

Dr. Rakoff: With that I would agree. The word "rhetoric" repeated so many times worries me. Let me explain my position. I have always been in favour of liberalizing institutional care. I think the old system was one that grew out of history and required correction. I am appalled by the lack of provision in the community for people who have been let out of "institutions."

Nevertheless, within the community and among such people there are crises which cannot be handled easily or competently in the community. That has been traditionally what hospitals are for. Mothers are excellent paediatricians and deal with most of the paediatric problems of the world. That would not deny the fact that there is expertise in a children's hospital, where people who are not very competent to judge what they need may be treated in crisis. The two things are not contradictory.

I am concerned with a very specific provision of the act and I do not want to be placed, even implicitly, nor do my colleagues at the university, in the false position of suggesting that we should return to the old storing of people in institutional barns. It is a rhetoric, to use your word, sir, with which I agree for the most part.

Mr. Chairman: Are there further questioners? If not, thank you very much for coming, Dr. Rakoff, and for sharing your opinions with us.

Our next presenters are from the Ontario Psychological Association; Ms. Toba Bryant and colleague. This brief has been circulated to the members. You already have it. Welcome. Toba, I know you but I do not have another name down here and there are obviously two of you there.

ONTARIO PSYCHOLOGICAL ASSOCIATION

Dr. Evans: I am Dr. David Evans, past president of the Ontario Psychological Association and chairperson of the legislation committee at this time.

Mr. Chairman: Thank you. Welcome.

Dr. Evans: Toba is the staff person associated with that committee.

Mr. Chairman: Take us through your brief any way you would like, and then we will open it up for questions.

Dr. Evans: I would like to read it, if I may. Otherwise, I will get it wrong.

Mr. Chairman: Please do.

1620

Dr. Evans: The Ontario Psychological Association recognizes the difficult balance required in legislation dealing with persons suffering "mental disorders" and is cognizant of the problems inherent in developing such legislation. What is required is a reasonable protection of the rights of individuals on the one hand and, on the other, an assurance that when they are unable to make good judgements concerning their welfare and treatment, a process exists permitting others to make decisions on their behalf. The proposed amendments to the Mental Health Act suggested in Bill 190, An Act to amend the Mental Health Act, 1987, provide a meaningful balance between these two opposing requirements of mental health legislation.

We are most impressed with the sections that require that the patient be notified of the right to appoint a representative to substitute in giving or refusing consent.

However, the association does have some concerns with Bill 190 in its current form. Our concerns are as follows. I think the minister dealt with the first at the last meeting, but we will reiterate it.

1. In its initial form, we had concerns about the lack of clarity regarding the population to which "outpatient" refers in subsection 1a(1). We are pleased the minister has amended this section such that former patients and outpatients cannot be treated without consent.

2. We are concerned that no provision has been made for patient advocates to play a role in the decision-making process concerning consent to treatment and other aspects governed by the Mental Health Act. We urge the committee to consider some method of involvement for patient advocates in the provisions of the bill.

3. There seems to be some inconsistency between clauses 35(2)(a) and 35a(1)(a) in that under clause 35(2)(a) the competent patient, whether voluntary or involuntary, has the right to refuse treatment, whereas in clause

35a(1)(a) the right of refusal for the involuntary patient is potentially denied.

4. We are concerned that there are no provisions in Bill 190 regarding informed consent. We urge the committee to incorporate provisions within the act to require "informed consent" rather than just "consent."

5. In the constitution of the review boards, there is the requirement under the proposed Bill 190 for at least one or more members of a given review board to be other than a psychiatrist or barrister and solicitor. Actually, that is all in Bill 7. We urge the committee to consider the inclusion of a patient advocate and/or mental health professional who is not a physician on each review board.

6. We have concerns about the vagueness of the terminology "psychiatric and other related medical treatment" in subsection 35(2) and as used in subsequent sections of Bill 190. The terminology should be more specific and should not include psychological treatment. If the definition did include psychological treatment, then there is no provision for the appropriate mental health professional to assist the patient or the representative of the patient giving substitute consent to make appropriate decisions regarding psychological treatment.

7. Finally, in subsection 1b(4) we recommend the inclusion of a specific time limit for the notification of patients concerning their rights.

Mr. Chairman: Thank you, doctor, for your useful comments.

Ms. Hart: Dr. Evans, following up on point 6, I am not sure I totally understand what you are saying. Are you saying that psychiatric may or may not include psychological?

Dr. Evans: In some people's minds that would be correct. It is our hope as psychologists that it would not.

Ms. Hart: I confess it never occurred to me that it might. Can you refer me to anything that supports your view?

Dr. Evans: I think what happens is that in the sort of clinical activity within the hospital setting, it may be possible for certain members of other professions to confuse the two terminologies. I guess our concern was that perhaps it is clear to you, but I think in just reading it and then relating it to clinical practice, on occasion we have situations where psychiatrists require that psychological reports be signed by them.

If there is that level of confusion in the actual practice of the two professions, at least in legislation we would want some clarity for terms used either by inclusion or exclusion. I think a paragraph that would further define what is meant by that term would be useful so do not get confused as we interpret the act.

Mr. Reville: Actually, I think there is a government amendment that deals with your concern.

Ms. Hart: Thank you, David.

Dr. Evans: Is there?

Mr. Chairman: Yes.

Dr. Evans: This has also happened in a week.

Mr. Reville: You may want a copy of the government amendments, and perhaps the clerk can provide them for you at some time.

Mr. Chairman: We will try to provide you with a copy--

Mr. Reville: I think a number of your concerns are dealt with.

Mr. Chairman: We will give you a copy of the package we were given. If you have some comments for us on the new amendments, you might forward them to me and I will make sure the rest of the committee gets them.

Mr. Reville: Perhaps you had an opportunity to hear Dr. Rakoff's deputation and the line of questioning I was pursuing.

Dr. Evans: Yes.

Mr. Reville: I find it amazing that he would state that in the event a competent involuntary patient refused a particular course of treatment, there would not be other treatments he might not refuse, and I feel that the outcome he suggests does not have to be as bleak. Would you comment on that?

Dr. Evans: I can see occasions. I have also worked at the Clarke, and as it was on the forensic unit, there were times when people were aggressive and in need of control in a hurry. Despite that, I still think there are protections within the act. The person could be declared incompetent and hence the provisions of the act with respect to incompetent patients would take over. That can be done fairly quickly, probably as quickly--facetiously--as emergency service occurs when you wander into the emergency department at any general hospital.

Mr. Chairman: That is not facetious. I think it is accurate.

Dr. Evans: Having been there myself with children, I know it takes a while.

I think there are protections in the act in those kinds of situations and I do agree they occur on the one hand, but I have looked at the legislation and feel there are ways around.

Mr. Reville: Dr. Rakoff was also familiar with the restraint provisions in the Mental Health Act and in fact has written learned monographs thereon. It is true, is it not, that if a patient is seen to be an imminent danger to himself or to somebody else, you can apply under the restraint provisions?

Dr. Evans: Yes.

Mr. Reville: Is it possible, do you suppose, to stabilize somebody under those restraint provisions?

Dr. Evans: Yes. I think the time provided to do that is reasonable and so forth.

Mr. Reville: At that point, the person might consent to a further course of treatment?

Dr. Evans: Yes.

Mr. Chairman: Are there any further questions?

If you can stay long enough to get the other amendments--I notice Mr. Reville gave you that specific one with the new wording on it.

Dr. Evans: Then we would react back to you.

Mr. Chairman: Just let me know at the earliest opportunity and I will make sure the other members of the committee get a chance to go over this, because we do clause-by-clause consideration on June 9.

Mr. Reville: Let me take this opportunity to say to this deputation and to members of the committee that I have a number of amendments that are with legislative counsel at present. As soon as they are available, I will make them available to all of you. Should anyone else want them, all you have to do is to let me know and I will make sure you get a set.

Mr. Chairman: Because we are a few minutes ahead of schedule, which is quite remarkable and inexplicable, can I just bring to your attention a potential procedural matter for tomorrow that we need to think about, not that we can come to any conclusions because caucuses are going to have to meet.

As you know, Bill 68 has been replaced by Bill 78, which is to change the time lines for when Bill 7 comes into effect. It was introduced for first reading today. There is the hope in the government House leader's mind that it will come up for second reading tomorrow. Obviously, it has to be taken to the caucuses of the opposition parties before it can be ultimately determined whether it will be dealt with tomorrow. For our purposes we have one cancellation tomorrow, which gives us some flexibility because otherwise we have an ordering problem, which is that in the normal state of affairs you do not have a same or similar subject being dealt with in the House at the same time as it is being dealt with in committee. You either have to suspend committee hearings or postpone the date it will be dealt with in the House.

1630

Because we are going to be short on deputants tomorrow, if you all act as speedily as you are today in taking information from them, my suggestion is that we could have time tomorrow either before or after the normal hours, in other words before four o'clock, or at 4:30 or 5:30 to 6 o'clock to adjourn the committee and move to the House and deal with those matters on Bill 78.

I wanted to bring that to your attention in terms of what our schedule is like tomorrow. I will not now book in anybody else to replace the person who has decided not to come in the case that you want to do that. I have that flexibility for tomorrow unless you instruct me otherwise now.

Mr. Reville: There are two concerns. One is the procedural problem. The other is that we were unable to schedule all the groups that wished to speak and there is such a group that would be prepared to speak tomorrow. I have no way of knowing whether the groups tomorrow will be as quick as the groups today have been. Maybe there is a way we could do both things and maybe there is not.

Mr. Chairman: I think there is, but it would probably be to have the group. Perhaps you could tell the clerk the name of the group.

Mr. Reville: It is the Parkdale Activity and Recreational Centre. Ms. Pat Capponi is the spokesperson for that group. It is a group of ex-psychiatric patients, so it would have some interest.

Mr. Chairman: There would be no reason why you could not ask Pat to come with any other representatives of the group and then if we have time to bring her on, again before or after, whichever way it was ordered, that would be quite possible. The understanding would be that the groups that had already been scheduled would get their normal amount of time.

Mr. Reville: Is it Clayton Ruby who is not coming?

Mr. Chairman: Yes.

Mr. Reville: Okay. He is the last deputation.

Mr. Chairman: Mr. Ruby may be coming with another group. It is the Criminal Lawyers' Association, which I believe is on a subsequent day.

Mr. Callahan: As I understand it, and I may be wrong, if the matter is left until the end and it is not almost on a consensual basis by all parties, the spillover until Wednesday to continue it is not available unless the business of that day is so arranged by the House leaders.

The importance of this bill as I understand it is that the June 1 deadline, which is today, has been reached and if it is not extended, that will leave a hiatus of at least one day and perhaps longer, and there is no prevention of Bill 7 kicking in.

In view of that, I wonder if we should do either one of two things. First of all, if the caucuses' decision--and I do not know whether it is just the New Democratic Party or whether it is the Conservative caucus as well--is that the matter is going to be debated at some length, we should be made aware of that as soon as possible, or the appropriate people. Certainly the chairman should be made aware of it.

Mr. Chairman: I should have some idea of what is happening.

Mr. Callahan: I would think so. I am not sure about Mr. Davis's.

Mr. Chairman: I have my sources.

Mr. Callahan: If that is the case, if there is going to be some debate, then I would certainly urge that we should start right as the routine proceedings start and spend the hearings on this matter. I will not say that is a matter of far more importance, because hearing delegates before this committee is important, but getting that matter through and completed tomorrow is of the utmost importance.

Mr. Chairman: At this stage all we can really do is make sure each of the caucuses knows our situation for tomorrow and what our plan is, which is basically that we will make adjustments if the request comes through to us to do so. But of course we cannot predict what the caucuses will do and there are other procedural matters that are raised by the whole existence of Bill 78, which may or may not be seen to be of importance to the caucuses.

One example: It is a bill dealing with a matter which is similar to a matter which is already before the House, which is this bill. That in and of

itself may be something which people do not like as a precedent, so we cannot presume at this stage what will happen. All we can do is make ourselves flexible at either end to be able to accommodate whatever the House leaders work out.

Mr. Reville: Do we need a motion on this at all?

Mr. Chairman: No, not at all.

Mr. Reville: We will save time and let the House leaders know that if they want to go ahead with Bill 78, we could do that at 5:30.

Mr. Chairman: Or earlier if they so choose.

Mr. Reville: Or earlier, at 3:30.

Mr. Chairman: Yes, exactly.

Mr. Reville: We can then invite Ms. Capponi to come on the understanding that we may have to rush out the door to do the other bill.

Mr. Chairman: We may not actually get a chance to hear her or she may get short shrift or whatever, but we will get some hearing.

Mr. Reville: I am sure she would say she was used to short shrift.

Mr. Chairman: I am sure she would.

Mr. Callahan: I just want to be clear, Mr. Reville, that if there is going to be some debate on the bill--in other words, if it is not going to go in and be cleared by six o'clock--then we had better start it right after question period.

Mr. Reville: If I may respond to that, the issue is whether the House gives unanimous consent to second and third reading on the same day. There may be a debate on second reading and a debate on the matter of consent, which could go on for many weeks. I cannot sit here and tell you at this point that we should start at 3:30, at 2:30 or at 10 in the morning.

Mr. Callahan: I know.

Mr. Reville: I await the instructions of the House.

Mr. Chairman: I think the situation for our consideration at the moment is essentially that it is out of our hands. It is in the hands of the House leaders and all we can do at this stage is to say that we are amenable to making some adjustments for ourselves in our own position here.

The next presenter--I cannot believe it is still early--is the Canadian Foundation for Children and the Law. Mr. Weagant, please take a seat. Your short submission is being circulated to members now, so if you wish to elaborate on it, please feel free to do so and we will hold the questions until the end.

CANADIAN FOUNDATION FOR CHILDREN AND THE LAW

Mr. Weagant: Thank you, Mr. Chairman. First of all, let me tell you what the Canadian Foundation for Children and the Law is.

We are a nonprofit organization. We are a children's advocacy group and our operating arm is a legal clinic in Toronto called Justice for Children, which some of you may know about. Our membership is province-wide. The community board which operates the clinic has lawyers, psychologists and social workers. Most areas of children's services are represented in our organization. The clinic is funded by the Ontario Legal Aid Plan.

Mr. Chairman: You are Mr. Weagant?

Mr. Weagant: That is correct. I am staff counsel at Justice for Children.

Mr. Chairman: Thank you.

Mr. Weagant: Since the age has dropped from 18 years to 16 years in the Mental Health Act under Bill 7, part of my client group is affected by Bill 190, the 16- and 17-year-olds. It is that group I would like to speak about today.

It is my information that other groups are making submissions on the various arguments around the issue of the competent person's right to refuse treatment, and I will not go into those arguments today. I will defer to others. However, I should put on the record that my organization's position is that the right of the competent person to refuse treatment is one of the cornerstones in the principle of respect of the inherent dignity in the human person.

I point out to the committee that this value or principle has been said by an authority no less than the Supreme Court of Canada to be an essential principle in a free and democratic society. That was in a Charter of Rights case a few years ago called the Oakes case, and it is on the charter that I would like to make several submissions to you.

My first submission is that mental health patients should not be treated any differently than any other type of patient because they are simply in a position of receiving medical treatment. The law in section 15 currently stands in this way: that persons who are similarly situated with respect to the law must be similarly treated. The way you test that proposition, the court has said, is to say, are the differences between the two groups relevant for the purposes of what is going on.

It will be my submission to you that the differences between mental health patients and any other patients, if they are competent, are irrelevant. That will be my first submission for you to consider. You may have a charter problem on your hands if this legislation passes, given that state of things.

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An even clearer problem under the charter arises with 16- and 17-year-olds. I must tell you as an aside that 16- and 17-year-olds are considered in my organization to be quite a disadvantaged group. They are given certain privileges under the law, yet they do not have all the rights they need to exercise those privileges. We consider 16- and 17-year-olds to be in limbo years.

Ironically enough, 16- and 17-year-olds will kind of rise to the top of the heap when we are talking about medical treatment, because they will be the only group in Ontario who will have a right to refuse psychiatric treatment where they are competent.

It arises this way. In the Child and Family Services Act, the sections on secure treatment and psychotropic drugs have been passed into law but they are not yet proclaimed. Under that legislation, a 16-year-old is considered competent. If they are competent, they have an absolute right to refuse treatment even though they may have been committed to secure treatment. That is the parallel provision in that act to commitment.

You may then have the situation of having a 17-year-old in a Ministry of Community and Social Services mental health facility who has this right and, should Bill 190 pass, down the street a 17-year-old who does not have this right. That, in my estimation, is a very clear case of discrimination and will attract quite a bit of scrutiny from a court should somebody actually bring it to a judge's attention.

The other issue I would like to address is the determination of competency. It is my information that Mr. Reville may be presenting an amendment around competency. I do not know what it will be, but I would like to put my organization's position on the record.

We do not feel that competency should be tied to an age as it is currently. You are assumed to be competent over 16, and under 16 you are equated with an incompetent. We feel that there are many people under the age of 16 who are competent to make a variety of decisions on their own behalf. Currently, you can have the capacity to commit a criminal offence at 12, and there are many in Ontario who would like to see that lowered.

In England currently, the House of Lords has thrown great doubt on the age of 16 as a cutoff date for competency in the case of Gillick. It came down from the House of Lords in December 1985 and it is reported in the English reports if anyone cares to go look at it.

That was a case where a mother tried to stop her children from getting birth control information from the Minister of Health in England, or whatever his official position is called, and the court said, "These girls are competent to receive this information if they want to get it." It said that parental rights and obligations do not hinge on any specific age. As children get older and they become more competent, they have a right to make these decision on their own behalf.

Currently, under the Child and Family Services Act, a 12-year-old can consent to counselling and that is the only consent you need. It would be my organization's position that after the age of 12, you should canvass competency before immediately assuming that someone does not have the capacity to make a decision on his own behalf.

I also point out that there are some differences under the Child and Family Services Act and under the Mental Health Act for what happens if you are caught up in a position where someone else is making a decision for you. I am speaking to the issue of competency here.

Under the Child and Family Services Act, even if you are incompetent, you are involved in the decision-making process for the full length of the process. There are legislated review teams, external review at the institution level, and the wishes of the patient, where they can be reasonably ascertained, must go in front of the review team before the specific treatment can be put in the plan of care.

I point to you that should Bill 190 go through, you would have competent

people who would not even have a right to attend their own review team to hear what it is that is going to happen to them.

Subject to any questions, those would be my submissions.

Mr. Chairman: You reminded me of a number of things that were put into the Child and Family Services Act that I had forgotten about and juxtaposing them with this act is very useful.

Mr. Reville: You are correct, Mr. Weagant; I intend to move an amendment that removes the presumption of incompetence for a person under 16.

Mr. Weagant: Hear, hear.

Mr. Reville: I will send it to you before we vote it. I will also move an amendment to deal with a person's right to attend a review board in respect of a treatment order, should treatment orders survive this process, for competent patients. That right currently does not exist. It strikes me as a gap that does not make any sense at all.

What your brief proves is that it is better to suffer your mental health problem when you are still a child than to suffer it for the first time when you are an adult.

Mr. Weagant: When you turn 16, in any event, you seem to be the most privileged person in society.

Mr. Reville: Just to make sure we have this clear, your organization is opposed to forced treatment on competent patients.

Mr. Weagant: On competent patients, that is correct. I can add that I have a complete list of the proposed amendments to the Child and Family Services Act, 1984, and the competent 16-year-old's right to refuse treatment is not up for amendment, if that is any help.

Mr. Chairman: I would like to have a copy of that. The minister has not shared it with me yet.

Mr. Reville: Do you have a brown bag with you?

Mr. Callahan: Just to go back to your phrase about "competent," let us take a person who is a schizophrenic. He is taking his medicine. It is assisting him in terms of staying on a level keel and being able to function properly. He starts to go off his medicine. Assuming you are saying that if a person is competent there should be no ability to force treatment on him, at what point and what criteria do you use for when he has reached the state of sufficient incompetence to have it forced on him?

If you do not have a clear definition of that, what professional or what doctor in his right mind is going to impose treatment on that person? If that hysteria continues or if that is not addressed, what do you do for the parents whose loved ones are suffering from that particular type of difficulty?

Finally, as we understand from talking with people who have come before us and who have addressed us on the question of schizophrenia, the very nature of the illness makes a person who is slipping off his medicine or who has not been taking it suspect anybody who is going to give the medicine. How would you deal with that group of people, if you suggest that someone who is competent cannot be forced to take treatment at whatever age?

Mr. Weagant: You are talking about the grey areas where someone who goes off his medication starts to deteriorate. I agree there is no good medical definition of competency right now and it is unfortunate, because I truly believe that should be the focus of this legislation. If it is to proceed at all, what we should be looking at is the process around determination of competency. There is a legal definition. At some point, the attending physician should be able to say with some certainty that the disease is affecting the person's ability to comprehend the issue in front of him or her. I believe the review teams now have a right to sit in judgement on that determination of competency, so there is a mechanism for review if either party feels he is not being listened to.

The second thing I would say is that these decisions about competency have been made for years by physicians, and they claim that they have been able to do it, especially for the purposes of estate planning. I am wondering why, suddenly, when the issue is now treatment, they do not have the tools to determine competency any more.

Mr. Callahan: Are you certain about that? When I was practising, I found that to get a psychiatrist to determine whether a person was competent or incompetent was very difficult. They just did not want to place themselves in a position of perhaps being sued afterwards for having made an error in that regard.

It would seem to me that if your suggestion that people who are competent not be required under any circumstances to take treatment is picked up, you would reinforce that historic position, which I observe anyway, and perhaps return this paranoia that some professionals have in terms of dealing with the question of competence or incompetence.

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Mr. Weagant: I would say two things. First, there is a review board; there is a quasi-judicial body that will be able to make that determination and will not have the same fear of liability once it has done so. The second point I make about that is that doctors do not feel they have the same problem when they are dealing with a non-mental-health problem. If a person chose not to take a certain medication the medical practitioner believed would help him but preferred to die quicker, for example, no one would refuse that person's right to do that, in spite of the fact that there may be a potential lawsuit buried in there as well. No one would claim that person was incompetent to make that decision unless he did not have the ability to understand what he was doing.

On this point, I believe just recently, in the last year or year and a half, Judge Main in family court in Toronto allowed a 14-year-old girl with terminal leukemia to refuse to take a blood transfusion, thus recognizing a person's right to choose a medical course that is no good for her in our eyes and, second, recognizing the right of someone under 16 to have the capacity to make that kind of decision.

Mr. Callahan: I am sure we, and you, have all experienced the situation where a person is brought up from the cells into a bail hearing and is obviously not there. The difficulty is it is getting towards the end of the day and the alternatives are to send him back into detention for three or four days until a psychiatrist can examine him, or somebody makes a decision of competency and the person is referred for 30 days or 60 days for treatment. During the course of that, assuming he is competent, if there is no provision

for medication, particularly in a schizophrenic scenario, to bring that person back to normalcy so he can be safely released from custody--I understand what everyone is saying by trying to protect the rights of the individual, but I think in a very real sense they may be denying the rights of an individual and they may be denying the rights of the family that loves that individual and has to live with him.

Mr. Weagant: I understand the scene you have put to me, but can we not assume that if that person genuinely is competent he is going to make a decision in his own best interests, and if he feels he would rather stay in detention than take his medication, that is a decision we have to allow that person to make? I do not believe someone would make that decision, but if he is competent, are we not to allow him to do that? Are you not really saying to me that it would be more expedient in certain cases to allow this provision to go through?

Mr. Callahan: I know what you are saying, but if I were a parent and my child was in custody, had to be held in detention in the Don or one of these other places, and I were outside suffering the agony that the child decides he does not want to take the medicine and is going to stay in that type of facility, I think it would drive the parent crazy. I think it would be very difficult on the parents.

It is fine to look at the right of the individual per se, the person who is ill, but certainly that has a dramatic impact, particularly with young children, on the adults who love that child, in terms of trying to get the child to be treated. In any event, I think I understand your position.

Mr. Weagant: I do not see the numbers involved in either group, adults or children, being very great. It is very hard to get accurate figures in this area. I would say that since section 8a has gone into the Mental Health Act, the number of children who disagreed with placements--I have heard there have been two hearings in Ontario, a very small number, and both of them have been where there has been a disagreement with the children's aid society and not a parent.

Fortunately or unfortunately, children tend to be very compliant at times of crises around certain things. Once you have them in a secure setting, children are usually more compliant, for good or for bad, around taking medication. As far as the number of adults who are going to get caught in this trap is concerned, I do not know how many would be of the type of criminal problem you are raising.

I can say that in a former life I was a court reporter; I reported the regional review board. In the year I was there, there were about 10 treatment orders, and they were not all competent people in front of the board. There were physicians who felt they were not in a position or did not want to make a determination of incapacity and so went to the review board to have someone endorse a decision they had made. In several cases, the patient was catatonic or could not even come to the review board. They clearly lacked capacity, so even those numbers, the 10 I was working that year in the central core, are not representative of how many people we are talking about. My guess is that the number of people we are talking about is extremely small.

Mr. Chairman: Something that has always confused me about this, besides the way of narrowing down the statistics as you just indicated, is the horror story that is always put before us that these people are going to become very ill, die, become violent to other people, injure themselves or

injure other people. Mr. Reville refers to this a number of times, but it is under the powers that are there presently for psychiatrists that if they think the person is a danger to himself or to somebody else, they can act so that in the most dangerous situations you can think of, in terms of the time that is involved, there should be protection for those people if for some reason or other they were still being considered competent.

Mr. Weagant: I stand to be corrected but I think that power is in the act. There is also a certain body of the common law around stepping in in emergencies. There are a lot of treatment-type things being done currently in children's mental health centres. I am thinking of some of the higher intrusive procedures that are mostly done in the name of medical emergency, where a child is engaging in some kind of behaviour, especially hurting himself, self-injurious behaviour, and the minister himself is approving of these things. I think there is a route to get to the dangerous people. I think Mr. Callahan is talking about something short of that.

Mr. Callahan: Just to get back to your comment, Mr. Chairman, I can give you an experience with a client who was charged with a very minor offence. He was a paranoid schizophrenic or schizophrenic. When he remained on his medicine, he was fine, the nicest person you would ever want to meet.

During the course of waiting for his trial, he obviously had not been taking his medicine and he paced up and down the corridor of a courthouse, touching the telephone at one end and then going and touching the door at the other end. He continually did that. Looking at that person, he was of no danger to himself--all he was doing was touching the telephone and touching the door at the other end--but he was obviously not well. He was also going to be faced with a warrant being issued for his arrest because I could not get him to go into the courtroom to do anything. How do you deal with that person?

Mr. Reville: Electric shock.

Mr. Callahan: No, it becomes obvious that as he continues to do this, he is deteriorating even worse and eventually could reach the stage where he may be of danger to himself.

Mr. Reville: Surely what you can do is have a competency hearing for such a person. In fact, a large number of the applications to the review board are for just that purpose, a competency hearing. If the person is found to be incompetent, then you ask his or her substitute decision-maker, if there is one, whether the treatment is okay. If he says yes, away you go. That is the way we deal with it.

Mr. Weagant: Mr. Callahan, the person you have described sounds to me like he has a tremendous lack of insight into what is going on and that is one of the components of any test for competency. I am wondering whether the person you describe actually is competent to be making that decision.

Mr. Chairman: The debate continues. Are there any further questions? There are none. Thank you very much.

Mr. Weagant: Thank you, Mr. Chairman.

Mr. Chairman: It was a pleasure to have you before us.

Mr. Beatty from the Patients' Rights Association is unable to attend this afternoon so we have no further deputants. Are there any questions or procedural matters members wish to raise?

Mr. Reville: Can the parliamentary assistant report on how those numbers are coming or does she know?

Ms. Hart: I do not know.

Mr. Reville: We requested from the minister the numbers on review board applications.

Ms. Hart: I do not know. I will check.

Mr. Reville: They are getting closer to my numbers all the time.

Mr. Chairman: It is frightening.

Mr. Reville: It is a scary idea.

The committee adjourned at 4:59 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

MENTAL HEALTH AMENDMENT ACT

TUESDAY, JUNE 2, 1987

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitution:

Reville, D. (Riverdale NDP) for Mr. Grande

Clerk: Carrozza, F.

Witnesses:

From the Canadian Mental Health Association, Ontario Division:

Davidson, B., Director, Social Policy

Emberson, C., Volunteer

From the Ministry of Health:

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)

Sharpe, G., Counsel, Legal Services Branch

From Concerned Friends of Ontario Citizens in Care Facilities:

Fussell, J., President

Baker, D., Legal Counsel

From Parkdale Activity and Recreation Centre:

Lacroix, M., Chairperson

Capponi, P., Community Worker

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, June 2, 1987

The committee met at 3:45 p.m. in room 151.

MENTAL HEALTH AMENDMENT ACT
(continued)

Consideration of Bill 190, An Act to amend the Mental Health Act.

Mr. Chairman: Il faut commencer. I call to order the standing committee on social development, the committee that is holding public hearings on Bill 190, An Act to amend The Mental Health Act, an act that deals with certain provisions around the rights of patients in care facilities.

We have scheduled two deputants for this afternoon, the first of which is here. Although we are a few minutes before our normally scheduled time, I would like to call on the Canadian Mental Health Association, Ontario Division representatives to come forward, Brian Davidson and Chris Emberson.

The cancellations today are those at five o'clock and 5:30. Both have cancelled as of now. We are trying to see whether Pat Capponi, who had indicated an interest in being here, may turn up. We indicated that if we had time today, we would try to fit her in, which we will obviously be able to do if she comes.

Mr. Reville: The call has gone out.

Mr. Chairman: You have the document from Mr. Davidson and Mr. Emberson. Perhaps you could identify yourselves for Hansard's purposes. You have been here watching these things for several days so you know how we operate. Go through your brief any way you like and then I will open up to questions following that.

CANADIAN MENTAL HEALTH ASSOCIATION, ONTARIO DIVISION

Mr. Davidson: I am Brian Davidson. I am the director of social policy for the Canadian Mental Health Association, Ontario Division. On my left is Chris Emberson, who is a volunteer with our Metro Toronto branch of the association. I would like to proceed through the brief, have Chris make a few comments and then open for questions.

The Canadian Mental Health Association, Ontario Division, is the parent organization that represents 35 branch offices located throughout Ontario. Our point of view on mental health issues ultimately reflects a wide range of consultation within the association. The diverse membership of CMHA Ontario is drawn from all sectors involved in the mental health field, ranging from consumers, families and friends to community-based and hospital-based service providers to a variety of concerned lay and professional people. Because of this diversity, our association believes that our views are very representative of the general population in Ontario.

Our 35 years of involvement in mental health has been extensive and is based on the following fundamental principles:

All persons have the right to appropriate treatment for mental health problems within the least restrictive setting appropriate to the person's needs. There should be maximum patient participation in the formulation of the treatment program.

Appropriate procedures, including review by courts and tribunals, should be maintained to ensure that the legal, civil and human rights of persons within institutions are respected and enhanced.

Community-based, individually centred care and support systems should be increasingly developed and dependency on a system of mass institution-based care and programs should be correspondingly reduced.

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Since this committee began its deliberations on Bill 190, a number of amendments have been suggested by the Minister of Health (Mr. Elston) during the clause-by-clause review to be scheduled later this month. We would like to thank the minister for bringing forward these amendments, as generally they appear to resolve some of the problems inherent in the original Bill 190. It would appear to us that the main issue remaining for deliberation here is the original, unproclaimed Bill 7 section providing for a competent patient's or an incompetent patient's substitute decision-maker to have the absolute right to refuse treatment. We would like to address our comments to this central issue.

The Canadian Mental Health Association has never adopted a rights-at-any-cost approach. Formalistic rights of the individual must not unduly limit access to appropriate mental health care. We believe the dangerousness standard, which allows involuntary committal of individuals who are likely to cause bodily harm or serious physical impairment to themselves or others, strikes the appropriate balance between the practical need to intervene in some situations, the individual rights of the client and the reasonable protection of others.

But involuntary committal should never be construed as a consent to any form of treatment. Commitment to a psychiatric institution does not render the individual incompetent. This distinction has become the foundation for the recognition of patients' rights. Except in cases of emergency or mental incompetency, the patient's voluntary, informed consent must be a prerequisite to any treatment. Emergencies are defined by their temporary nature, the complete inability of the patient to consent and the existence of circumstances that require immediate treatment to avert death or serious physical injury.

Patients' rights have been enhanced through the efforts of the patients' rights movement, mental health advocates and psychiatric professionals. The majority of psychiatrists are favourably disposed towards expanding patients' rights. In spite of this widespread support for enhancing patients' rights, there is a vocal minority in opposition. Opponents of the right to refuse treatment are drawn mainly from the ranks of mental health professionals and relatives of the mentally ill.

Psychiatrists who oppose the right to refuse are keenly aware of the inherent conflict between law and psychiatry. While lawyers argue for the

enhancement of liberty, psychiatrists argue for the enhancement of mental health. However, the presentation of health and liberty as mutually exclusive values is somewhat misleading. Liberty includes the freedom to make decisions about one's health. Enhancing liberty enhances health. Allowing people to have control of their lives and ownership over their treatment decisions enhances long-term outcomes.

If a person is competent, he has a right to make personal decisions that others may regard as foolish. It is the nature of the decision-making process, not the outcome of the decision, that determines competency. To allow competent people to make foolish decisions does not commit thousands of patients to misery. Most people, given a choice, opt for their own best interests. It is appropriate to treat, based on substitute consent, someone who is incapable of making a competent choice.

Some psychiatrists argue that there can be no true autonomy with psychosis. This is true if the psychosis renders the patient incompetent. However, we do not need a law that permits forced treatment of the competent patient to be able to treat the incompetent psychotic patient. The legislation has effectively addressed this issue by way of substitute consent and emergency procedures, but we need to improve our ability to determine competency.

The relatives of the mentally ill struggle daily with the practical manifestations of mental illness. They are faced with numerous problems, some of catastrophic proportions, for which they have received very little preparation throughout the ordinary course of their lives. Relatives and friends often become powerful advocates, lobbying effectively for the best possible opportunities of care for the people they love. Unfortunately, the right to treatment gets extrapolated at times by this group to include the right to impose treatment on the objecting patient. Relatives argue that the patient is too ill to give consent. This, again, we believe, points to competency as the real issue, not the right to refuse treatment.

I would like quickly to give you an overview of another jurisdiction's experience with this kind of legislation. It is not new. It has been in place in the United States for up to 15 years in some states. In one of the best studies, *An Empirical View of Patients Exercising Their Rights to Refuse Treatment*, the authors make three major points. This is a summary of their analysis of the legislation:

The first point is that the right to refuse treatment exists on a qualified basis for involuntarily committed patients. It is based on constitutional rights and the separation of commitment from competency in commitment statutes. In an emergency, the interest of the state supersedes the right of the individual to refuse treatment and hospital staff may provide treatment. In a nonemergency situation, the courts generally hold that there is an absolute right to refuse treatment for nondangerous, competent individuals, even involuntary patients.

The second major point they make is that the right to refuse treatment is basically a euphemism for the right to refuse psychotropic drugs. These drugs are now being categorized, with electroconvulsive therapy and psychosurgery, as invasive, potentially harmful and unusual, mainly due to the presence of tardive dyskinesia. I might point out that this has become a problem in this province as witnessed by the development of a clinic specializing in tardive dyskinesia in Toronto. The problem has got large

enough that we now have a clinic specializing in one of the side-effects of these drugs.

A third point they make is that there is no clear consensus of opinion on how the state should guarantee due process protection to committed persons or the specific procedures that should be used to override the right to refuse psychotropic medications in nonemergency situations. Generally, the override of an involuntary patient's refusal in a nonemergency situation is only allowed if the patient has been adjudicated incompetent.

In summary, treatment noncompliance is no more serious a problem in psychiatric medicine than in physical medicine. Since antipsychotic medication is the most common form of treatment in psychiatric institutions, it also tends to be the treatment that patients refuse most often. The research from the US demonstrates that a very small percentage of involuntary patients refuses treatment. In this province, we know what the stats look like or we have a good idea. There are very few, at least in our psychiatric hospitals. Those are the only data we have.

Research on the clinical implications of treatment refusal is limited. The work that has been done suggests that treatment refusal is neither rampant nor prolonged. Most episodes of refusal are of a temporary nature, rarely lasting more than a couple of days. Antipsychotic medications are one of the most powerful tools of modern psychiatry in controlling the symptoms of mental illness. However, drugs are not a cure for mental illness and their effectual uncertainty and considerable risks must be taken into account when considering the causes of drug refusal. Drug refusal may be an indication that there is something seriously wrong with the drug rather than with the patient.

The absolute right of the competent involuntary patient to refuse treatment has conjured up images of disaster in the minds of some practitioners, politicians and members of the general public. Opponents of the right to refuse argue that hospitals will be forced into custodial care, patients will languish without treatment, doctors will become jailers, episodes of violence will increase and people will be prevented from getting well. There is no support in the literature for any of these claims. In fact, the beneficial consequences of the right to refuse treatment are significant.

The real issue underlying the right to refuse treatment is quality of care. I will quote one of our colleagues in the United States who is the leading researcher in this area. He has done most of the American research on treatment at present:

"At stake is not, in truth, the right to refuse treatment, but the right of every patient to receive good treatment, to reject bad treatment and to have some recourse: these are the rights that matter."

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I would just like to mention for the committee's information one thing that is not included in our submission. In discussing this kind of legislation, I talked with some of our colleagues in Nova Scotia which has had treatment refusal legislation in place for some 10 years. Their comments to me are that it is not a problem.

To that end, I would now like to turn it over to Chris Emberson who, as I said, is a volunteer at our CMHA branch here in Metro and a chemical engineer.

Mr. Emberson: I have also been a consumer of mental health services and I think my viewpoint is relevant to this committee.

In December 1984, I went to Toronto East General and Orthopaedic Hospital to admit myself. I had some concerns about keeping control over my actions. The following day after I had admitted myself, and generally there was an amount of crisis intervention I really needed at this point, I asked to be discharged because that evening I had a date set up with my father to go and see Marc Garneau at Ontario Place and pictures of the space shuttle. When they told me they did not think I should leave at that point, I became rather angry and very upset because quite frankly I had been looking forward to this for quite some time, my father having recently gone through heart bypass surgery.

After about an hour's worth of arguing with various psychiatrists, I was presented with my involuntary commitment to the institution because they felt that for some reason I was a danger either to myself or to other people. I did not get to go. The following morning they discharged me. For some strange reason, they had felt I was a danger to myself. At the same time, I was given lithium and sleeping pills, what have you, to control my problems. This, to me, is an example of misuse of the treatment system.

Another time when I had problems with a psychiatrist recommending and in some respects forcing treatment was a subsequent admission to North York General Hospital where it was discovered that my lithium level--I had been prescribed lithium on a previous visit--was somewhat low. The medication was increased to a level that was very uncomfortable for me and I experienced quite a few side-effects. There were no beneficial results of the increase in treatment. When I went to the doctor to point out that my lithium level in blood had increased to a sufficient level and asked whether I could back to three pills a day, he said, "No, I want you to carry on at that level."

The point that comes to me now when I think back is that I had had gone to the doctor asking to have the medication reduced because I had been on the medication for some three to four months and it had been quite effective at the lower level, but the psychiatrist for some reason felt safer in keeping the drug at a higher level. I did not have a choice here. They said, "Take the four pills a day or suffer the consequences." Subsequent treatment received in the same hospital involved me in the decisions about medication. I found that my attitude towards medication changed in that time frame. I found I was not resisting treatment. I found that I became more accepting of the use of medications to treat my illness.

Over the years since that time, I have slowly but surely got off the medication with the co-operation of my psychiatrist. In many respects, when I found that I could participate in the decision-making about my own treatment, things became much easier. I really worked hard to become well. I contrast that with the attitude that I had when I was forced to take medication without really being consulted.

The crucial issue that I believe exists with patients who are suffering from depressive or manic depressive, the affective disorders, is that here are people who are normally competent but who come into a situation where they do not feel they can control themselves. They are still capable of making decisions but they are not necessarily capable of living life in our society.

To put these patients in a position where they have to take a certain treatment on the recommendation of the psychiatrist, I think goes against the best interests of the patient. That is pretty well all I have to say.

Mr. Reville: I would like to start by commending you, Mr. Emberson, for coming before us and telling us your story and your reaction to forced treatment.

Just a couple of points of clarification: When you went to hospital in December 1984, you admitted yourself voluntarily, I assume.

Mr. Emberson: Yes.

Mr. Reville: Then when you wanted to leave to see Marc Garneau with your dad, you were not allowed to leave.

Mr. Emberson: No.

Mr. Reville: But the next day you were discharged.

Mr. Emberson: Yes. After full consultation with (inaudible) friends and family, I was allowed to leave.

Mr. Reville: How did you feel at that point? Did you think it was kind of odd that they would not let you leave on the one day and yet they discharged you--

Mr. Emberson: I was extremely angry because I had been looking forward to this particular situation to be close to my father for quite some time. I think a lot of the "bizarre behaviour" that they saw was simply just a well of emotion. My father, in my eyes, came very close to death. This was a way of becoming closer to him. To deny me that, with no reason--it seemed totally irrational. I was going to spend the evening with my father, who was a responsible citizen. It was not that they were discharging me out on the streets to run around by myself.

Mr. Reville: It has been suggested to this committee that there are some illnesses, particularly the psychoses, that render an individual incapable of making a rational decision. Usually that has been in connection with schizophrenia. Of course, bipolar affect is also a psychosis; it used to be called one in the DSM 3, and I think it still is. Do you have any comment on that?

Mr. Emberson: I think it comes back again to the whole issue of competency; that is, if the issue of competence can be resolved--judging someone's competence on the basis of his diagnosis, rather than the other way around. In my experience with the mental health care field, I have met many schizophrenics and other patients who are diagnosed in that way who are quite capable of taking care of themselves.

Mr. Reville: Do you know that this bill says that if you are under 16 you are automatically incompetent?

Mr. Emberson: No, I was not aware of that.

Mr. Reville: Thank you.

Mr. Andrewes: Mr. Davidson, I want to come back to your four points on page 1 of the introduction.

In point 1, you say there should be maximum patient participation in the formulation of the treatment program. I guess that essentially the example Chris is giving us is illustrating that.

Mr. Davidson: It goes a bit further. Our position has always been that the treatment process should include the client, the patient, as much as possible. But we are also saying that treatment programs, the development of services, should have maximum participation by consumers because they know what is needed. It is kind of a double message.

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Mr. Andrewes: Can you explain to me your position on Bill 190? "The Canadian Mental Health Association has never adopted a 'rights-at-any-cost' approach." Then you go on to say, "Formalistic rights of the individual must not unduly limit access to appropriate mental health care." What do you mean by "formalistic rights"?

Mr. Davidson: Not just rights, but legislation--the Mental Health Act, mainly--that is the formal mechanism for ensuring the rights of psychiatric patients. We would say that Bill 190 in its present form would negate a right that is in Bill 7 that we support, the right of a competent patient to refuse treatment.

Mr. Andrewes: This statement takes that in reverse. It says that formalistic rights must not hinder access to appropriate mental health care.

Mr. Davidson: It is a convoluted way to say it, but the main thrust of it is to say there should be an ultimate right to treatment, a right to service, and formalistic rights should not hinder that.

As we have an act now, we are not progressing towards giving patients a right to good-quality service or to good-quality treatment. In fact, I would say that Bill 190 may hinder that right.

Mr. Andrewes: Coming to page 7, you said in your "Summary and Conclusion," "Treatment noncompliance is no more serious a problem in psychiatric medicine than in physical medicine." Several witnesses have suggested to us that it is a more serious problem. I would like an explanation from you, in terms of the client groups you are dealing with, as to why you feel it is not.

Mr. Davidson: In fact, the prevalence of treatment noncompliance is less in the psychiatric field than it is in the physical medicine area. It gets perhaps more concerted press and more concentration by the public because again it is the mental health field. But as our statistics tell us, the number of refusers over the last year has been minimal.

If you look in physical medicine, you will find that the rates for treatment noncompliance and refusal tend to be over half the population for physical medicine. In the psychiatric field it is very small; it is about one or 1.5 per cent, as we saw in our psychiatric hospitals.

There are good reasons, I think. As we have noted, refusal or noncompliance may be a sign of health in many clients faced with the decision of taking some very intrusive drugs with some serious debilitating side-effects. I think there is every good reason to give people the right to refuse.

Mr. Andrewes: You say, "Opponents of the right to refuse argue that hospitals are being forced into custodial care"--that is the warehousing argument--and "there is no support in the scientific literature for any of these claims." I have to take you at your word on that.

Mr. Davidson: It might be instructive for the committee to talk to--I mean, most of the research comes out of the United States, but there is another province in this country that has had this legislation on the books. In discussing this with them, they confirmed that they are not warehousing people and that people are not refusing; it is just not a problem.

Mr. Andrewes: Last week there was group here, a confederation or coalition of community-based service providers, that suggested it would not be a problem particularly if there were a stronger community-based program and if people, when they were given the right to exercise that choice, really had some alternative. Would you agree with that?

Mr. Davidson: I would agree. There is a good example in practice right now in Sherbrooke, Quebec, where there is one general hospital system set up that has the capacity to deal with every kind of mental disorder that one could imagine. They have also developed a capacity to deal with people in the community, in outreach teams, in crisis intervention and support teams. They told us that in the last year they had a total of three involuntary committals in that unit, mainly because the people are being followed and taken care of; services are provided out there.

Emergencies are rare, because there is usually enough prevention to avert them, but if someone does arrive in an emergency situation, in many cases the patient is well known to the treatment team. They are calm. There is no need for the patient to become excited or agitated. They often do not meet the committal criteria; they are not dangerous. Their treatment regime tends to get people out of the hospital very quickly too, and their medication is monitored while they are out.

I think there are some examples of how a real system of care goes from the hospital out to the community. If those things are in place, I think we could avoid some problems.

Ms. Hart: In your brief--I think you were talking about the American experience--it seems implicit that your association is in favour of treatment override of involuntary patients in an emergency situation. Do I have that correct?

Mr. Davidson: Yes.

Ms. Hart: We have with us today Gilbert Sharpe, who is our Ministry of Health specialist in mental health law. I would like to ask Mr. Sharpe, do we currently have that in our law before Bill 190?

Mr. Sharpe: There is no provision in legislation that would permit the forcing of treatment, even in an emergency, on any patient, involuntary included, where he is competent and refuses. It is analogous to a case, for example, of a Jehovah's Witness who may be in a life-threatening situation but still has the ability in law to refuse a blood transfusion. The simple answer is no, there is not that provision currently.

Ms. Hart: The other issue you raised was not in your brief, but at the end of it, you talked about the Nova Scotia legislation and treatment refusal. Mr. Sharpe also has something to add about that legislation. Perhaps he can clarify it for the rest of us.

Mr. Sharpe: In developing Bill 190, and before that, the province has been involved in an effort with other provinces and the uniform law

commissioners to develop a model Mental Health Act. That group as well has looked at other jurisdictions. What we found was that about half of the provinces have the old provision--when I say "old," in Ontario I mean prior to 1967--that on admission or committal to hospital, the doctor has the automatic right and power to treat without recourse to any review mechanism.

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Nova Scotia adopted a provision about 10 years ago that on admission, patients are to be assessed as to their competence to consent or refuse treatment. It appears as if in Nova Scotia there is no ability to force treatment on a competent patient. In theory, that is true. In practice, when a patient is admitted, he is usually at an acute phase of his illness and tends to be incompetent at that point. In fact, when we spoke to psychiatrists in Nova Scotia hospitals, they told us that very few, if any, patients are competent at that initial point of assessment.

So there is a finding of incompetency that is maintained for a period of, I believe, up to a month at which point it is renewed. It is subject to review on application by the patient, but from then, it is an uphill battle because the patient is deemed to continue to be incompetent unless he can prove otherwise. In fact, treatment is imposed on those patients using a relative's consent. I suspect one of the reasons why Mr. Davidson suggests there does not appear to be a problem is that the practice seems to suggest that patients are treated.

Mr. Davidson: But I think also the largest percentage of review board hearings in Nova Scotia are around committal, which tends to bring up the whole incompetency determination. There is a mechanism for that review. If you look closely, the wording of the competency determination is similar to ours, yet they have added another criteria which has to do with the illness of the person impeding his decision-making.

I put that forward just for consideration because the minister has said he would like to deal with the competency issue after this hearing and I think it is one example to look at. Perhaps Nova Scotia's is not a perfect system, but I think it has at least been consistent with patients' rights.

Ms. Hart: That is putting me in a difficult position. I was born in Nova Scotia.

Mr. Reville: In one of these strange courtroom twists of fate, there is a psychiatrist researcher from Nova Scotia in the audience, if you would like to hear from him. His name is Mr. Richman. He is sitting there with his camera on. He is a tourist today, but he has done a lot of work on this whole matter and he might be able to elucidate some of the things Mr. Sharpe has said, if the committee would like to hear from him.

Mr. Chairman: If we have time, I am sure we will be happy to accommodate him after we have the next deputation.

Mr. Andrewes: This is something of a supplementary to Ms. Hart's question and Mr. Sharpe's comments. Please pardon my question, because I am very much a layman here in territory I am trying to tread carefully on and not sound stupid. I take it what you are saying is that the difficulty in defining competency and incompetency under the Mental Health Act complicates the whole issue that is the subject of debate in Bill 190.

Mr. Davidson: Yes.

Mr. Andrewes: How do we simplify that? Are we putting the cart before the horse by dealing with this bill at a time when perhaps we should be dealing with other subjects?

Mr. Davidson: We may have been, but we felt reassured by the minister's comments that he would deal with this issue after the hearing. One of the things that refusal legislation always raises is the whole competency determination, and because we feel that is going to be looked at, I think we can proceed with this.

Mr. Andrewes: Proceed in what manner?

Mr. Davidson: We would support proceeding with a competent patient's ability to refuse treatment, which is the Bill 7 amendment.

Mr. Chairman: Does that mean we do or do not need Bill 190, in your opinion, until we get the competency decision made?

Mr. Davidson: There are many good things in Bill 190 we would hate to lose. Our position would be to have the best of both worlds. There are a lot of progressive amendments in Bill 190 which could really improve our Mental Health Act, but I think the Bill 7 amendment would be another victory too.

Mr. Andrewes: But Bill 190 clearly overrides impact this will have.

Mr. Davidson: The one section, yes.

Mr. Chairman: Mr. Jackson, would you allow me to ask a question?

Mr. Jackson: He answered my question.

Mr. Chairman: Thank you. I have a couple of things. The first is, you say there is now a clinic in Toronto that deals only with tardive dyskinesia. Can you tell me a little bit about it?

Mr. Davidson: I am not sure how long it has been operating. It is run out of the Queen Street Mental Health Centre. The main reason for it was that, if you have walked through Parkdale at all lately, you will have seen lots of folks with the side-effects of tardive dyskinesia, and it is quite obvious. There was a need identified to provide some service for this.

Mr. Chairman: Do you have any idea of the numbers of people who are registered with the clinic or anything like that?

Mr. Davidson: I really do not have the details.

Mr. Chairman: Do you know the doctors in charge of it or anyone we can contact to find out more about it?

Mr. Davidson: I could find out that information.

Mr. Reville: Could I ask the parliamentary assistant to find out?

Ms. Hart: I do not know off the top of my head but I might well be able to find out.

Mr. Chairman: That would be great. It would be helpful if we were to know that.

You indicated there are no statistics to indicate the consequences of poor housing or whatever in other jurisdictions, outside of the Nova Scotia example. Can you direct us to a specific study or two that we can look at?

Mr. Davidson: Sure. There are many studies. A lot of research has been done in this area over the past five years or so. In fact, there is a gentleman coming up, Paul Applebaum, who is probably the leading researcher in this. I believe he is coming up next week. He may be around.

Mr. Reville: I have all the studies if you want them.

Mr. Chairman: Good. I know you will lend me your reading material. Thank you, Mr. Reville.

Mr. Reville: It is pretty thick.

Mr. Andrewes: He reads quickly.

Mr. Chairman: I have one question for our legal counsel in terms of this situation at the moment. Do I understand that a person who is deemed to be incompetent in Ontario at the moment and is a danger to himself or to other people can have forced treatment?

Mr. Sharpe: The person who is incompetent--and there is a right, of course, to challenge that finding since Bill 7 in December, but assuming the person is confirmed as incompetent, he can be treated on his relative's consent. Whether you consider that forced treatment, I think the law views it as a substitute decision-making process, much as you or I might consent on behalf of, say, an aged aunt or a grandparent who is ill and in hospital for physical care and not able to give his own consent. In that sense, the person can be given treatment on the basis of substitute authority.

Mr. Chairman: What if there is no relative?

Mr. Sharpe: If there is no relative, for the involuntary patient the review board mechanism remains intact. For other patients there is no recourse.

Mr. Chairman: Do I take it from that, in fact, that the question primarily again comes down to one of a definition of competency and of whether you can adopt or at this stage can intervene?

Mr. Sharpe: Only in so far as the relative is prepared to say yes. The relative stands in the patient's shoes and has the authority to refuse the treatment on behalf of the patient, in which case since yesterday, with Bill 7 coming into force, there would be no means of treating that patient even though the patient is incompetent and may wish the treatment.

Mr. Reville: But Bill 190 takes that away again.

Mr. Sharpe: That is right.

Mr. Chairman: Do you want to make a comment?

Mr. Davidson: I just want to say the reality is that restraint procedures are used in those situations. People are treated regardless of

their status. If they are in the middle of a major psychosis, there are ways of calming that person down with medication, as long as it is documented.

Mr. Sharpe: The restraint provisions were very broad, but in December again, as part of the Bill 7 amendments, the legislative language severely curtailed the use of restraint to circumstances where the prevention of serious bodily harm is apparent and imminent. It is only to control that immediate crisis situation that restraint can currently be used.

In fact, today there was a major conference on consent at Queen Street and a number of questions were raised by the clinical staff, nurses in particular, about what they perceive as their lack of ability to use any medication now, even in the most dire circumstances, which of course is not true, but I do not believe it is true any longer that people are being treated under the notion of restraint; not since the change in December.

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Mr. Chairman: Any further questions? If not, thank you both very much for participating. You have been very helpful.

Our next presenters are from Concerned Friends of Ontario Citizens in Care Facilities, Joan Fussell and David Baker. There is no written brief for the members, but both of these individuals are well experienced in presenting to committee.

Ms. Hart: And well known to all of us.

Mr. Chairman: Yes, and well known to us all. You do not have to introduce yourselves. I think it is pretty straightforward which one is which.

Mr. Baker: Flattery.

Mr. Chairman: Backhanded, whichever. I do not know which of you wants to lead off. We will just hold questions until you are finished.

CONCERNED FRIENDS OF ONTARIO CITIZENS IN CARE FACILITIES

Miss Fussell: Thank you very much. Concerned Friends of Ontario Citizens in Care Facilities appreciates this opportunity to add our voice to other groups to support the right of competent persons to consent or refuse consent for treatment. This includes the right to be fully informed of the alternatives available and of the possible consequences of those treatments. We also support the right of incompetent persons to have a substitute give or refuse consent on their behalf.

Our organization consists of friends and relatives of people living in institutions. We recognize that people in institutions are very vulnerable to having the will of others imposed upon them. We work to bring about amendments to the nursing home legislation to include protection of residents' rights.

It must not be assumed when people enter institutions, be they nursing homes or psychiatric facilities, that they give up all their control over their own lives. It must not be assumed that they must subject themselves to the control of others who presume to know what is best for them. Except in emergency situations, only those people who are proven to be incapable of taking control over their lives should have this right removed, and only for as long as their incompetence persists. Even then, their wishes should be respected as much as possible.

Bill 190 would negate this fundamental right to refuse treatment by permitting the review board of a psychiatric facility to reverse the decision of an involuntary competent patient or the incompetent patient's substitute. Concerned Friends finds this provision to be unjust and unsupportable. Any competent adult deserves the right to decide what is to be done with his or her body, including treatment for a medical or psychiatric condition. This right to decide means the right to be fully informed of one's condition, of the alternative forms of treatment for the condition and of the effects, both beneficial and detrimental, which can be expected to result from the treatments.

A distinction cannot be made between treatment for medical or psychiatric conditions. If a person is competent to understand the treatment and the consequences and to make a decision of what is best for him or her, then he or she can make that decision about either a medical or a psychiatric condition.

The important thing is that a person be well-informed by the physician and that the physician be attentive to the patient's reasons for a particular choice or the reasons for refusing a specific treatment. The physician stands to learn more about the effects of medications in this dialogue, and the patient may enjoy a therapeutic effect from having been an active participant in his or her treatment and maintaining some control. Having the right to refuse does not mean that it must be exercised, but we contend that it must be available.

For the purposes of consent to treatment, we support the provisions in the bill for determination of a substitute to make decisions for an incompetent person according to his or her wishes or in his or her best interest. We are particularly in favour of the provision for a competent person to identify in advance the person whom he or she trusts to be his or her representative if he or she becomes incompetent and that this representative takes precedence over the automatic appointment of a relative.

We also support the minister's proposed amendment, which would allow an incompetent person to at least ask the review board to appoint a specific representative to substitute for him or her. These provisions are respectful of the person's wish to have control over his or her life by at least having some control over the selection of who is in control.

The offensive part of Bill 190 is the provision in section 5 which allows the review board to override this decision of a competent person or the substitute of an incompetent person. As an organization representing families, our members may very well find their decisions with respect to treatment of their relatives are overridden by the board.

This in effect removes the right to consent or to refuse consent to treatment and puts control in the hands of others. We have seen no convincing reasons to justify this abrogation of a person's right to control what is to be done to his or her body.

The minister has proposed an amendment, or intends to, I understand, to add safeguards regarding these treatment orders by the review board. In our view, this proposed amendment is a travesty and does nothing to protect the resident's rights to consent or to refuse consent. What it says is that a doctor seeking the order must show that the benefits of the proposed treatment outweigh the risks and that the proposed treatment is the least restrictive and intrusive in the circumstances.

These assurances are all well and good, but they should be expected of any physician proposing any treatment to anybody. They should be given to the competent patient or to the patient's substitute in order for him or her to make the treatment decision. The patient must always be assured of the right to seek a second medical opinion so that the patient or substitute must not have to rely for informed consent solely on the information provided by just one doctor.

In Concerned Friends' experience, we have seen indications of medication which controls behaviour being used in institutions in place of activities, programming and staff suitable for people's needs. We have received complaints of people in nursing homes being overmedicated to keep them quiet and subdued. People who wander about in a facility are seen to be at risk of falling and injuring themselves or bothering other residents, and that may often be the case, but instead of addressing the reason for this behaviour, so often the solution is just to restrain them physically or chemically.

The better solution, in our view, would be to have more interesting activities and supervision for them. Regardless of the type of facility or the type of psychiatric disability, the treatment of choice should not be medication if the problem could be alleviated by more appropriate programming or counselling.

Of particular concern to our organization is the plight of older people in institutions. Now that the amendments to the Nursing Homes Act have passed, a bill of rights is in place for nursing home residents. It includes the right to consent or to refuse treatment. A refusal is not subject in a nursing home to an override by a review board. It would be inconsistent if the same Ministry of Health allows psychogeriatric residents of nursing homes to refuse treatment and denies the same right to patients with a similar condition in psychiatric facilities.

I now pass the mike to David Baker, who is the legal adviser to Concerned Friends.

Mr. Baker: We felt it would be useful, particularly as the Mental Health Act becomes more and more complex, to approach these issues in a very simplistic way, if you like.

As we have said, the issue for us focuses on the question of competent override: specifically, why a person who is in law capable of making a decision on his or her behalf with respect to treatment, or--and this is even more difficult for us to fathom or understand--why a relative of an individual, who is of age and mentally capable of making this decision, should have his or her decision overridden by a review board.

From our standpoint, this issue should never be lost sight of in all the language in the legislation. It represents a complete abrogation of individual rights in favour of psychiatric treatment. All you need to do to justify this is to prove it would benefit the individual in order to get it.

From a legal standpoint, this raises very serious Charter of Rights issues. This is perhaps the most fundamental charter issue in the whole mental health field and it is quite remarkable to me that after doing the right thing in Bill 7, the government should turn around and head back in the wrong direction.

Furthermore, you have raised the question: Why psychiatric treatment as opposed to medical treatment? Has psychiatry advanced to the point where it is in advance of other forms of medical treatment, that there should be this strong a bias in favour of treatment so as to override the individual's right to have some say in what happens to a person's body or mind?

What are the legislative safeguards provided in Bill 190? In our submission, they amount to this: that the attending physician must be proven to have been negligent in what he prescribed. Quite simply, if it falls upon the patient or the relative to prove that the treatment would not be more likely to improve the condition of the individual as opposed to harming it, if you have to prove the dangers outweigh the benefits--no practising physician in this province should be allowed to go on prescribing drugs if this is what you have to prove in any particular case.

Furthermore, the provision recently added with respect to the least restrictive alternative is, in our submission, a mockery. In the highest court decision with respect to the Mental Health Act to date, the court approved a treatment order for neuroleptics, which is a generic term for virtually any form of psychiatric medication, for a three-month period. That was the order that was prescribed.

In those circumstances, what alternatives are there? All alternatives are within the generic title of neuroleptics, and yet this is considered to be an adequate order on the part of a review board. The whole question of alternatives becomes irrelevant in such a circumstance. There is nothing in Bill 7 to deal with that in any way. From our standpoint, the concept of "least restrictive alternative," while in theory wonderful, in practice is irrelevant. Essentially, the whole bill comes down to a question of whether the doctor is negligent in having prescribed this particular treatment.

What is the effect of the override? What does it mean in practice within psychiatric hospitals? I think this is a most important concern. One might say it is no big deal because apparently there have been only 16 such orders over a 10-month period during which there had been 10,000 admissions to hospitals. So why are we so concerned about 16 cases? It is the submission of Concerned Friends of Ontario Citizens in Care Facilities that if there is a competent override provision in the Mental Health Act, there is no such thing as a voluntary consent by any person in a psychiatric hospital.

Quite simply, the reason is that any time a patient who is competent, or a relative, chooses to refuse treatment, however good their reasons for doing so may be, they know--and if they do not know they will be quickly informed--that the psychiatrist holds all the aces: "You can go to the review board and you will have to prove I am negligent in having prescribed this treatment."

In our submission, that means there is no such thing as consent to treatment in psychiatric facilities if this bill passes. There is no justification for it; there was no justification in 1978 when it was slipped in after all public hearings had been held; there has been no justification provided, in our estimation, since that time.

What are the real reasons for putting this in Bill 190? Quite simply, they are these: one, we do not want patients choosing alternatives. For Mrs. T., who chose not to have electroconvulsive therapy--she did not want it and she was willing to accept neuroleptics--this section was used to override her desire to choose from among reasonable alternatives.

Why was this section added in 1978? Why was it slipped in at the last minute? It was slipped in, in a response to an administrative convenience argument raised in a specific incident coming out of North Bay Psychiatric Hospital. There had been a patient who was considered hard to manage and the argument followed that we will have to control patients by administering treatment whether they accept treatment or not.

This related to issues about staffing, I would submit, and those kinds of issues really are not appropriate when we are talking about removing the most fundamental right which people have, that is, to control their own bodies and minds. I would submit that it also relates to the question of a therapeutic relationship between the doctor and the patient. Specifically, it relates to the necessity or lack of necessity that there be communication and that there be accountability as between the doctor and the patient.

Essentially, the doctor counts on the coercive authority of the review board to avoid the necessity of any communication or any accountability to the patient. I would again submit that any attempts to analogize between psychiatry and medicine after that occurs would be fruitless.

Finally, I think there is the utilitarian argument that we are going to speed up discharge and save the government a lot of money. I would suggest to you that is a very short-sighted approach, because once people leave the hospital, they are on their own. If they had treatment forced on them while they were in hospital, they surely are not interested in treatment once they come out of hospital. That is the kind of problem one faces that leads to what we have in this province, which is the revolving-door syndrome in our psychiatric facilities.

Those are the real reasons some people have asked you to introduce Bill 190. I would suggest to you that there are major problems with all those reasons.

Are there any alternatives? Is there a better way of dealing with this?

I and a large number of other people have participated for four years on an interministerial committee organized by the Ministry of the Attorney General with participation from the Ministries of Health, Community and Social Services and all other interested ministries reviewing guardianship legislation. This is legislation which deals with people who, because of their mental condition, are unable to make decisions on their own behalf.

On this committee, there were six employees of the Ministry of Health, there was a representative of the Ontario Medical Association, the Canadian Civil Liberties Association--essentially all the parties who have come before you as a committee and made their points, pro and con, with respect to Bill 190.

I would say there is complete agreement to proceed on these issues. There is complete agreement on the issues dealt with under Bill 190 among all the participants. I really ask you why, if we have managed to reach consensus after four years of work, are we proceeding with a bill which deeply divides the communities we are talking about?

I should tell you that the agreement indicates that there is no need for a competent override provision. It indicates that decisions with respect to capacity to consent to treatment in psychiatric facilities and in other treatment facilities can be and should be the same standards. There should not

be a different standard for psychiatric facilities. I think it is an insult to me personally and to all the people who have worked for four years on that committee to develop that consensus document to proceed with Bill 190. I am shocked that the government has chosen to do so.

The trend in this area, as reflected in the Clark Electro-convulsive Therapy Review Committee report, in the Nursing Home Act that Concerned Friends of Ontario Citizens in Care Facilities has worked so hard to get and in mental health generally throughout the world, is in line with the guardianship proposals, and I cannot fathom why we would go to a competent override.

I would suggest that the best manner of proceeding would be for the government to withdraw Bill 190 and introduce the guardianship legislation, the consensus that has been reached in this committee, in the fall. You will have a much better piece of mental health legislation--it will be a piece of health legislation generally--than anything that could be done through Bill 190, which, again, I feel creates unnecessary controversy when consensus has already been reached by all the key players in this area.

Mr. Reville: I agree with almost everything you said. I am just a little concerned about the message you are giving the committee.

One of the things the government did to try to sweeten this deal was to add some good stuff to Bill 190. Mr. Andrewes was asking Mr. Davidson whether there was anything in Bill 190 he liked. It seems to me that I would like you to make it clear that--you find the competent override stuff abhorrent. Is that correct?

1650

Mr. Baker: That is right.

Mr. Reville: How do you feel about the substitute decision-making changes?

Mr. Baker: It is done better in the guardianship package, which all the parties affected have reached consensus upon. I think it is a mistake to put it in the Mental Health Act when it is just going to be removed again in a few months, assuming the government follows the recommendations of its own committee.

Mr. Reville: In view of your strong views, we might all save a lot of time and see if the government is not prepared to withdraw Bill 190 totally.

Ms. Hart: I will just make a couple of comments in response to that. First of all, as I understand it, this report dealt with substitute decision-making and did not have anything to do with competent override. Am I correct?

Mr. Baker: The issue of competent override was discussed in that committee.

Ms. Hart: But it was not in that report.

Mr. Baker: If I may, in that committee I raised it with the representative of the Ontario Medical Association and with the lead representative of the Ministry of Health. I indicated to them that the

position they were taking, in my estimation, was totally contrary to Bill 190, and they indicated that, yes, it was. That was done publicly in that hearing.

In fairness, what the Ministry of Health representative did say was that the government policy presently was in line with what she was saying, that if Bill 190 passed, that might be a different situation. The legislation deals throughout with all issues related to incapacity to make treatment decisions, and I know the matter was discussed within the committee with respect to competent override, because I raised the matter myself.

Ms. Hart: The other thing that interests me in what you say is that we have had groups appear before this committee that take a different view. As I understand it, this ministerial committee had all the interests represented on it, yet you say to us here that it was a consensus document with respect to competent override. I am curious about that. If it was consensus at one time, has the consensus fallen apart?

Mr. Baker: I am sorry. I do not know. As I say, I raised it with the Ministry of Health and the OMA representatives. You would have to tell me the specific groups that you are concerned about.

I just heard the Canadian Mental Health Association speaking. I think there is an attempt to sweeten the competent override provision on the part of the Ministry of Health by adding in selected pieces out of the guardianship legislation. I just think it is misguided on everyone's part to reach for one thing and get slipped another.

I hope people will take the view that the best place to deal with all these issues is in a piece of legislation designed to deal with people who are incapable of making decisions on their own behalf, because I would suggest that is the only justification to ever have any kind of override provision. If there are other reasons in any of these areas that should have been raised and could have been raised in that committee and were not--and I can tell you that I do not know of a single person on that committee who was not aware that the issue of competent override was on the table for discussion, was discussed and was rejected.

Ms. Hart: I guess my information is different from yours. It is that there was no consensus on competent override. It may have been discussed, but my information is that it is putting it a little strongly to say that there was consensus on that issue. Perhaps Gilbert Sharpe can help us out on this one.

Mr. Baker: If I can just respond to that, I think people were playing games with me if that was, in fact, what happened in that committee.

Mr. Sharpe: The current guardianship committee--and I think it is important to this committee to understand the history--has been around for about 10 years in one form or another. The issue arose in 1979 surrounding concerns relating to substitute decision-making authority for incompetent people who are the subject of contraceptive sterilization procedures. Some members may recall that discussion some years ago.

A committee was initially set up to look at that and was ultimately broadened to look at general guardianship concerns. As I say, in one form or another, it has been around for a number of years. The latest form is this interministerial committee with representation from community groups.

The primary thrust of the committee's work has been to examine the notion of, really, an update for the Mental Incompetency Act which is a terribly out-of-date statute, to look at the parameters for establishing specific areas of incapacity, rather than the all-or-nothing approach that currently exists. One model, for example, that has been considered is Alberta's Dependent Adults Act that has about a dozen specific areas of incapacity.

The first year or so, the committee's work focused on estate matters, and I think it is safe to say that in regard to estates and the report of the committee on estates there was significant consensus in that area.

Where the committee began to get a bit off the rails was in the area of personal guardianship, decision-making on behalf of others. In that area, I have not attended all meetings, as I know Mr. Baker has not attended all meetings of the committee, but I am sure we both kept up on the minutes and the happenings. It has been a very difficult past year and I wish the chairman, Steve Fram were available--I believe he is still out of the country--but he could probably speak better than anyone about some of the frustrations, of the discussions around the table.

I have to suggest that from my own perspective there has not been a consensus in some of the fundamental areas. In fact, as late as a few weeks ago in a meeting on a very critical vote involving the Mental Health Act, as the minutes reflect, the vote was seven to six against the position that the Ministry of Health and the Ontario Medical Association were taking. It was not an issue specifically relating to something that is happening here in this committee, but it is an indication of how the process has gone for the past year, in my view.

The fact is that there have been groups that have come forward and have presented serious concerns about Bill 7 coming into force. On Thursday, I believe, the committee is going to hear from groups like the Ontario Medical Association and Ontario Psychiatric Association, first hand, as to what their attitudes and views are as to the issues before this committee. We would suggest also that if there were some indication at the guardianship committee of consensus in this area, that it may be that the representatives of those groups do not speak for the groups themselves.

Now I hesitate to take that any further, particularly because it is my understanding that one of the physicians who will be speaking to this group on Thursday, Dr. Steve Kline, indeed is the representative of the Ontario Medical Association on the guardianship committee. Perhaps further discussion of the consensus issue might be deferred until Dr. Kline appears and can speak for himself on the matter.

Mr. Chairman: Probably there is no purpose in following this debate further in the sense that it is outside the scope of what we have been asked to deal with at the moment as a committee, but I presume that the questions will perhaps arise again when Dr. Kline and others are before us. Any further questions, Ms. Hart?

Ms. Hart: Yes. Miss Fussell talked about the differences in the way nursing home residents were treated under the nursing home amendments versus under Bill 190 and I believe Mr. Sharpe had a comment he wished to make about that.

Mr. Sharpe: Only to echo the comments that others have made to this committee about the difference between the involuntary psychiatric patient and

every other patient. There is a fundamental distinction in the sense that this is the only area short of virulent communicable diseases--people who have those diseases and are not agreeing to come for treatment--where the power has been granted to physicians to deprive someone of their liberty on account of their illness and the consequences likely flowing from that illness.

Other patients--nursing home residents, patients in public hospitals, voluntary patients in psychiatric facilities--are free to say yes or no and if they do not want the care and treatment being provided, they have the freedom to leave the facility. There might be practical problems in arranging for that, but at least, theoretically, they are free to come and go as they please.

People who are defined as a danger as a result of psychosis are not going to be free to leave until such time as the psychosis has been treated to the point at which they are no longer dangerous. There is an important distinction that this committee has heard, and will probably continue to hear, between the involuntary psychiatric patient and other patients, and residents of nursing homes and other types of institutions.

1700

Mr. Baker: I would just be interested to know how that in any way justifies removing the person's right to consent to treatment if he is competent. More particularly, I would like to know what, in heaven's name, that has to do with overriding a relative's refusal to give a consent to a particular treatment. It just staggers the mind. Which of the four unethical responses or justifications do you chose? Or give me a good one.

Mr. Chairman: Sure, please. That is the crux of it.

Mr. Sharpe: I am not sure I would characterize my responses as unethical, and I do not think I would necessarily choose from the four that have been presented.

Perhaps the most telling argument at Queen Street, which was discussed this morning, has to do with the duty of care and the ethical responsibility that physicians and clinicians feel in hospitals, where they are charged with the responsibility of, essentially, imprisoning people because of the consequences flowing from their illness, yet not given the ability to impose that treatment which is necessary to, not necessarily cure them, but at least put them in a state where they can be released at an early date from the facility.

I know the argument that the patient should be free to decide whether he will remain in that facility indefinitely--really, that is a matter for the individual patient to decide upon. It does get very much into a value judgment as to how important society views an abrogation of rights in this area.

It was interesting to hear Mr. Justice Krever of the Court of Appeal this morning speak in terms of the need, in some cases, to be somewhat paternalistic, not in a pejorative sense, but in the sense of ensuring the care of people whose freedom has been taken away from them in order to swiftly restore them to that freedom.

As I said, some jurisdictions pay lipservice to the notion of not forcing treatment on competent people who have been committed and then find most people incompetent and are then able to justify treating them in that sense. I do not think that is an honest approach.

The position that is being advocated here and which, I must say, has been supported by the provinces and territories in this three-year project on uniformity has been to develop a compromise which allows for the imposition of treatment but only after an extensive process where the rights of the individual in a procedural due process sense have been fully respected.

I believe there was evidence before the committee last week from some of the doctors that they are very concerned about the judicialization aspect of the Mental Health Act. The review board system is a protracted one. Most physicians are not happy with having to go to review boards. On treatment orders, they must get three opinions and present evidence to the board. I disagree with Mr. Baker's characterization of the presentation of the evidence as being up to the patient to prove certain criteria. In fact, there is case law that suggests the onus is clearly on the physician at the review board hearing to justify all the criteria. After that hearing, if the treatment is ordered and the patient feels that there has not been a proper hearing or that the board decision is wrong, there is an appeal to the court.

In fact, in many cases today where a patient does not want treatment, the treatment can be delayed for many months. Doctors undertake that process very warily and not with any great enthusiasm, because it does involve them in legal process for some time. That may be why there are so few. I am not sure of the numbers--16, 18 or 20. There are not very many treatment orders in terms of competent override, but that may be why the numbers are small. They are being resorted to in only the most urgent of cases.

Mr. Baker: If I could respond to that last point first, if they are resorted to in only the most urgent cases and yet treatment is withheld pending a hearing and then again pending an appeal, these so-called urgent cases can, as you very well know, go on for months and months of adversarial proceedings.

It is not the 16 or 18 or 20 cases we are talking about; it is the threat that, "If you refuse treatment, we can go to the review board and override your decision." It is not any more fun for the patient or the family member to go through that process where, I say again, the test is whether or not the physician is negligent in having prescribed the treatment, wherever the onus may lie. It is not any more fun for the patient going through that process than it is for the physician, but the effect, as I say, is a coercive one that infects the whole atmosphere in the psychiatric facility.

With respect to the benign paternalism objective of the exercise, as you characterize it, I would suggest that if the government is so very concerned about the acceptance of treatment, the route that should be followed, number one, would be to explore the provision of alternatives to individuals within these facilities. As I am sure you are aware, there is no such thing as psychotherapy going on in provincial psychiatric hospitals and there is an over-reliance on medications because of staffing problems. These are the kinds of things a concerned government should be looking at, rather than forcing an inadequate treatment system upon patients.

To characterize this as benign paternalism, to my mind, is less than forthright in terms of the reality within these facilities.

Mr. Callahan: I want to get a clarification of something. You spoke of an onus being upon the physicians. I raised this with a lady who was here on one other occasion. I think she was a lawyer. With the words "it is satisfied that" in subsection 35a(4), I suggested to her that my understanding

of the case is that this calls for an onus beyond a reasonable doubt. She suggested it was a balance of probabilities. Which is it?

Mr. Sharpe: The cases that have been decided thus far suggest that it is the civil standard, the balance of probabilities, that whether the issue is justifying the committal or the criteria for treatment, the physician does have the onus but that the standard for satisfaction is a balance of probabilities. It is not the much heavier criminal standard.

Mr. Callahan: Were there not cases on both sides? I am thinking particularly of drug trials where they said the word "satisfied" in a statute means "beyond a reasonable doubt."

Mr. Sharpe: There certainly have been criminal prosecutions where that word has been interpreted to mean just that, "beyond a reasonable doubt." The judges in the few cases--there have not been many--that have existed under our law, however, given that it is a civil process, have imposed the lesser standard.

I must say that south of the border, terms similar to "satisfied" have resulted in a characterization halfway between the two standards. Some American courts have used terms like "clear and convincing."

But whatever the term is, I think it is fair to say the tribunal calls on the physician to present sufficient evidence so that the tribunal feels comfortable that the evidence justifies the decision being made under the criteria set out in the statute.

Some studies have shown that, regardless of what the language is, and south of the border in various states there must be a half a dozen characterizations of what the language is in terms of the illness, ultimately, the tribunal--in the United States, it is usually the courts--does look at the evidence, weigh it, look at the rebuttal evidence that has been presented and it is essentially a matter of feeling comfortable that there is a tipping of the scales, more than just a bit but not all the way, as one would have in a criminal trial.

Mr. Baker: For me, the point is this. If, as the district court in Barrie ruled last week, it is sufficient for the order to deal with neuroleptics--in other words, psychiatric medication related to mental illness--for a three-month period, what difference does an onus make in those sorts of circumstances? Where the test is essentially negligence--that is, is this something which will benefit the individual, and that is what the test comes down to--what difference does an onus make in the situation such as that?

Really, if you wanted to tighten things up, you would say things like, "guarantees that the individual will benefit from the treatment." I do not see anything like that in the legislation. Then you can come back later and find out and have a little bit of accountability for what has occurred.

In language which is stated so broadly that you can say virtually any kind of treatment for a three-month period and all you have to do is prove it may be of some benefit, how do you get an onus of proof to make very much difference in that situation, as opposed to in a drug trial, "Did this happen; yes or no?" There an onus of proof is very important. Here you are talking about all kinds of maybes in the future for all sorts of unspecified treatments over an extended period of time.

1710

Mr. Callahan: I gather the thrust of your concern with reference to that item is that the function or the working of the board is simply to give some authority to the physician, as opposed to making him or that board perhaps rise to a little higher standard to be able to achieve the results that are in there. Would you be more comfortable if there were a higher standard, whatever that wording might be?

Mr. Baker: I am saying it is morally wrong to force something on someone because the state believes it will be good for the individual. That is my fundamental point. In terms of tightening up language, I have to be given a rationale different from benign paternalism before I could begin to establish criteria. For me, the criterion is capacity. If the person is said in law to have the mental capacity to make the decision in question, why are we taking that person's right to make that decision away from him?

Mr. Callahan: I am sorry. I know you are behind time, Mr. Chairman, and I apologize for this, but we have heard from people in here, schizophrenics, parents of schizophrenics--

Mr. Baker: Yes, I heard the presentation as well.

Mr. Callahan: --where, in fact, part of the disability is that as they cease taking the medicine, they become paranoid in terms of medicine being given to them. If we were to agree with your general comment, how do these people get out of the anxiety of seeing a loved one becoming worse every day with no possible way of inducing that person, through a legal process, to take the medicine? It is a given fact, and I think most psychiatrists and most lay people who have seen the medicine given would agree, that it does bring these people back to a degree of normalcy. How do you deal with that?

Mr. Baker: I made a specific point of coming to hear the Ontario Friends of Schizophrenics' presentation, because that is the one group whose position I do not understand on this; I made a point of coming in to hear their position. Essentially, for me, their concerns are addressed by the fact that in a psychiatric facility the attending physician has absolute authority in the first instance to make the decision whether that friend or relative has the mental capacity to make that decision. If one's paranoia affects one's ability to make treatment decisions on one's own behalf, then that decision is removed from the individual's hands. Where is it placed? You place it in the hands of the member of Friends of Schizophrenics, the friend or relative who is a member of this organization.

I do not understand how they can say, "You should remove the decision from our hands." Think of it in any other setting: say in a nursing home, you as a son or daughter of a person in a nursing home had your right to make decisions on behalf of your mother or father removed. Why? Because that parent is incompetent. But that is why the decision was given to you. That is why you are allowed to make it.

"It helps the administration of the nursing home if we treat the individual." You might respond: "I am sorry, but that just is not good enough. Could you please explain to me again why this is the treatment of choice? Why are we doing this as opposed to that?" That is the kind of coercive atmosphere which should not be in any health facility in this province. That would be my submission.

Mr. Chairman: Just one question, Mr. Sharpe, in terms of your response a little while ago. Were you indicating that in places like Nova Scotia, because of their system, there are more people in the psychiatric institutions who are deemed to be incompetent than there are in the Ontario institutions?

Mr. Sharpe: This is based on several phone calls and anecdotal comments from psychiatrists we spoke to who work in the system. Their suggestion is that because their law operates in a fashion where there is an assessment of competency to consent to treatment on admission, and because on admission the patients tends to be the sickest--that is the stage at which the committal is taking place; I believe the Nova Scotia committal criteria are somewhat similar to ours, it talks in terms of danger to their own safety, something like that; they are fairly narrow; in other words, psychosis must have developed to a point where the person is quite ill--the tendency is to find the person incompetent rather than competent, where they have been committed to the hospital. I am not talking about voluntary patients now.

Mr. Chairman: But do we know, statistically, whether there is a significant difference between our system and theirs?

Mr. Sharpe: I do not. The gentleman from Nova Scotia may know.

Mr. Chairman: He left, unfortunately.

Mr. Reville: There is a much lower percentage of people committed in Nova Scotia institutions than there are in ours in Ontario. It really irritates me for Mr. Sharpe to be making these kinds of sweeping statements when they are not correct.

Mr. Chairman: Perhaps I can ask Ministry of Health officials to get us the statistics from Nova Scotia and compare them with here, just to see if that assertion is correct.

I have one last question to Mr. Baker. You would prefer the guardianship legislation to come in and replace Bill 190. Hearing what Mr. Sharpe is saying, that does not sound very likely in the next little while. Would your fallback position at this stage be, given the politics of things, a revised Bill 190 but without an override, until such time as we see whether guardianship legislation would come forward and replace it?

Mr. Baker: I do not share Mr. Sharpe's scepticism in terms of the consensus within the committee. A large number of tradeoffs were made throughout this whole area. The two areas where matters came to a vote related to estate matters under the Mental Health Act, as Gilbert very well knows, and to public health officials being allowed to enter homes in the community.

These were not controversial issues and a consensus was arrived at. I am confident that is the kind of consensus which would receive wide public acceptance. I do not have a fallback position. My position is that the guardianship legislation we worked four years to produce is good and it represents a consensus position. I am sorry Gilbert was not able to make more of the meetings. I was there for, I would say, 90 per cent of them, every Tuesday night for four years. That is a lot of work to put into something to be told that the deal is not a deal. As far as I am concerned it is a deal.

Mr. Chairman: Okay, Mr. Baker. Thank you both very much for attending today. It was a spirited exchange.

Miss Fussell: Thank you very much.

Mr. Chairman: Marie Lacroix and Pat Capponi, would you like to come forward? I presume they slipped out for a smoke break and they are back.

Good afternoon. I am glad you could come in on such short notice and fill a gap that was left by another deputant. I presume, as a result, you do not have mimeographed copies of all your statements, but if you would like to make your oral presentation any way at all, we will move to questions following that. Perhaps just for the camera people and the translators you could identify yourselves and where you are from.

PARKDALE ACTIVITY AND RECREATION CENTRE

Ms. Lacroix: My name is Marie Lacroix. I am chairman of Parkdale Activity and Recreation Centre. I will be presenting the position of the board, and Pat Capponi, who is a staff member at the centre, will be answering questions.

PARC is a drop-in centre in Parkdale which is funded by the Ministry of Health and managed by a board of directors consisting of 50 per cent of community people and 50 per cent of members or users of the centre. Of our membership, 80 per cent is categorized as chronic psychiatric patients.

The membership, board and staff of PARC have considered in a public forum the implications of Bill 7 and Bill 190. Although there are, of course, diverse opinions, common threads of concern were easily found, especially in the areas dealing with consent, treatment and choice, substitute decision-making and continuity of care.

Our presentation may raise more questions than answers, but this committee would be hard-pressed to find a more effective group. It would appear that, as far as the issue of consent goes, we have put the cart before the horse. In order even to discuss consent, we must know what constitutes informed consent as it is practised now.

1720

It is our experience that the majority of our members have never been told what their diagnosis is, what it means in their lives, what the medication is they are supposed to take, what potential short-term and long-term side-effects may result from the use of those medications and what alternatives, if any, exist. In the face of this lack of information, many cease to take prescribed doses on the understandable grounds that it leaves them either tired all the time, constipated and with dry mouth and shaking hands, or in the case of a number of men, with prolonged bouts of impotence. This refusal is then labelled noncompliance and the client is viewed as difficult and unco-operative. As a result, we are discussing treating an individual without his or her consent, rather than addressing the very real consequence of paternalistic behaviour: It negates the client's need to know.

Statements such as, "If you do not take your pills, you will get sick," or, "The doctor prescribed this and he knows best," have a devastating effect on personal autonomy and do nothing to promote open dialogue or a sense of participation in a treatment plan. Aside from informed consent, there is also the issue of the kinds of care available. Treatment is not solely an in-hospital issue. It must be addressed within the context of continuity of care in order to be at least partially effective. Failure to see this need

results in recidivism rates such as Queen Street Mental Health Centre's, far above 60 per cent.

Treatment in this time of cutbacks and closures must not simply equal medication. It is a formula for disaster. Housing, food, meaningful employment and recreational and educational opportunities are all necessary to ensure that a primary diagnosis is not exacerbated by Ontario's shoestring aftercare system. Treatment and consent to treatment means placing more serious and rational expectations on hospitals to ensure adequate and appropriate assistance and support are available.

Choice of treatment options is, again, critical if we are to deal with the real issues arising from refusal or noncompliance. Medication should never be the only option. Many clients have experienced adverse reactions to specific neuroleptics or have heard of incidences of death in which medications may have played a part. Those who would absolutely refuse Haloperidol, for instance, could and would tolerate a different antipsychotic if their objections were listened to and accepted. Other options, such as one-to-one counselling, case management, drug vacations and innovative programs must be established and presented as reasonable and viable alternatives. One choice is no choice; one option, no option.

We have some specific recommendations:

1. All options and resources should be in place and available to clients before forced treatment or alternative consent is sought.

2. Continuity of care must be in place and functioning in all those critical areas--housing, income and therapy--which, especially in Parkdale, would drive the sanest person totally mad.

3. Written guidelines should be produced by the Ministry of Health as to what the patient must be informed of and a regular monitoring system should be put in place to ensure compliance. Documentation should be a regular part of a patient's file, specifically dealing with what the patient has been told about side-effects, their diagnosis and whether he or she was able to fully understand at the time or whether it needs repeating.

4. Training must be available for medical staff with regard to working through consent issues with patients. This is essential to ensure that troubled people are not going to be short-changed by custodial attitudes, arbitrary discharges regarding noncompliance, etc. New roles, new attitudes and new time frames for treatment will have to be available so that staff can approach the issue of introducing treatment to people in the most humane and, usually, productive manner.

5. There should be no power to seek substitute consent when the client is an outpatient living in the community.

6. Mechanisms, some form of citizen advocacy, must be in place to ensure that ex-patients are able to access forms and legal advice re substitute decision-makers for it to be more than a paper policy.

Mr. Chairman: Thank you. Questions? Mr. Reville, we will keep the regular rotation here.

Mr. Reville: I would be happy to change it if someone else can think of anything to ask. Why do I not pass and see what happens?

Mr. Chairman: Ms. Hart, do you have questions?

Ms. Hart: I have no questions.

Mr. Chairman: You had better jump in, Mr. Reville, and get things going; the old icebreaker.

Mr. Reville: You make the point that many of your members do not believe they have ever given their consent because they have never had these treatments explained to them, or the side-effects or how they will feel when they take Haloperidol or anything. Do you have any stories from people who have been forced to take treatment against their will, who have had review board orders on them? I know that because many of your members are "chronic," they have been in and out of hospital a lot. Can you tell us how any of them feel about having been forced?

Ms. Capponi: What it tends to do, when they get out, is to reinforce that they do not want to go back in. I am thinking in particular of one fellow whose behaviour was deteriorating. In our area, we are very closely located to the Queen Street Mental Health Centre. There are probably about 3,000 ex-patients living in Parkdale, so when one of them gets ill, the thing is that either he goes voluntarily or can be committed to the crisis unit at Queen Street, which generally means three days of intense medication and then back to the place that aggravated the condition in the first place.

What that has led to is people feeling that the hospital really does not have anything to offer them. I have sat in Archway Counselling and Crisis Centre, which is a satellite of Queen Street, and argued that people need to be taken to Queen Street and have been told they are not co-operative, they are not sick enough and that they have been refusing care. What they are refusing is to spend three days in the crisis ward getting medicated. There is a certain dignity to that refusal, to saying: "That is not what I need. That is not what I want. I need a place to live. I need a place that is clean. I need someone to help me, not to be shot up with medication that is going to make me feel lousy for three days." That is across the board.

At the centre, we are almost amazed that forced treatment is even being discussed when the majority of our members cannot, and as staff we cannot, access care. We cannot get care for people. It seems almost a nonissue, a very bizarre twist to what is happening out there, which is that one cannot get a bed when one needs it, cannot get care when one needs it, and certainly cannot get quality care. Care has to be more than medication and we are not getting it out there.

Mr. Reville: Mr. Sharpe was pleased to quote one of my former professors, Mr. Justice Horace Krever, who said we must be paternalistic in order to swiftly restore people to freedom. You have some experience with the freedom your clients have. Would you like to share some of that freedom with this committee?

Ms. Capponi: Yes. I should mention that I am also a survivor of Ontario's aftercare system. It seems to me that if you can choose when to take away someone's freedom and choose when to give it back, there is no freedom at issue. As I think Dennis Timbrell used to say, what people seem to be free to do is to live anywhere and to be free to do anything on welfare. That is not

enough to rent a room or buy groceries or pay the rent or do whatever. It is not enough to buy clothing.

There is no freedom. There is misery, hunger, fear and abandonment and all that taken together does not--actually, yes, if you get through the system, you are much stronger for it; you can come to these committees and talk. But a lot of our guys do not get through the system. They commit suicide, fade away or run away rather than subject themselves to what Ontario has to offer. This idea that people are standing around refusing care just blows me away.

Mr. Reville: You have been an expert witness at a number of inquests; too many. Has forced treatment been an issue at any of those inquests, Pat?

Ms. Capponi: No. What I have stressed is that something should be there called the right to care because we will get--actually, I went to the Ombudsman and filed a complaint that was finally acted upon and a letter has gone out to the Solicitor General (Mr. Keyes). In the five inquests I have been at as an expert on community care, the same recommendations are made time and time again. You do not discharge people to boarding homes where they are not going to get care. You do not send people out of the hospital with a drug card. That does not constitute care.

We have been forced to use the route of the Ombudsman, which is not exactly a dynamic route, to try to make the province take its responsibility and give the people what they need to prevent the kinds of deaths that are occurring time and time again. When there is, as two weekends ago, a death on Roncesvalles Avenue, someone lying on the tracks waiting for the train to come--it takes a lot to put someone in the position where death is easier than living, and having faced that in a Parkdale boarding home. They are doing that to too many people too often and the province is not being responsive.

The Minister of Health has come to our area and seen what is going on at first hand. I thought it made a sufficient impression that we would not be going through this kind of stuff, that we would be talking about how to guarantee people choice of care, a right to care. We are not getting that.

Mr. Reville: Did you get a chance to look at the Community Mental-Health Programs Federation's sort of community care bill of rights that they hope I will move as part of an amendment to this bill?

Ms. Capponi: PARC is a member of that organization and I have no doubt we would support it, even though I understand we will not get very far with it as a motion.

Mr. Reville: I might be able to trick the chairman and make him think it is in order.

Ms. Capponi: As an individual, I see nothing at odds with our hopes in that. I would love to see this committee just stand up and say: "We obviously have the wrong issue here. Let us talk about how to get people care." That is not going to happen, I suppose.

Mr. Reville: It will in a way. Thank you.

Mr. Chairman: Thank you very much and merci beaucoup.

Ms. Capponi: Did you have translation services?

Mr. Chairman: We do, but every now and then I get to use my three words in French. Non, il y a plus que ça.

We have no other witnesses before us today. We are therefore adjourned until Thursday after orders of the day. Although we establish our hours as starting at 4 p.m., I again ask members to be here as conveniently as possible after orders of the day and after the scrums are over. Then we can always move things up a little and either work in other experts, as we have just done, or adjourn a little earlier and go back to our offices for some organized work, which I know we all want now and then.

The committee adjourned at 5:33 p.m.

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Public

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

MENTAL HEALTH AMENDMENT ACT

THURSDAY, JUNE 4, 1987



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

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Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitution:

Reville, D. (Riverdale NDP) for Mr. Grande

Clerk: Carrozza, F.

Witnesses:

From the Ministry of Health:

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)

Sharpe, G., Counsel, Legal Services Branch

Auksi, J., Project Officer, Mental Health Operations Branch

From the Ontario Psychiatric Association:

Ben-Aron, Dr. M., Chairperson, OPA Legislative Review Committee, Adult Section

From the Ontario Medical Association:

Saunders, Dr. J. A., Director of Health Services

Klein, Dr. S.

Hoffman, Dr. B. F., Chairman, Special Committee on Mental Health

From the Citizens Commission on Human Rights:

Dobson-Smith, R., Chairman

From the Criminal Lawyers' Association:

Edwardh, M.

Matsui, M.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, June 4, 1987

The committee met at 4:06 p.m. in room 151.

MENTAL HEALTH AMENDMENT ACT
(continued)

Consideration of Bill 190, An Act to amend the Mental Health Act.

Mr. Chairman: I call to order the standing committee on social development to deal with Bill 190, An Act to amend the Mental Health Act, which is an act providing for certain civil liberties and other matters regarding mental health patients in Ontario.

There are a number of things just before we go to our first presenter. I want to draw to the attention of members that we should all have been circulated with, at this point, a letter from the Canadian Bar Association. If you do not have one in your office, the clerk does have an extra one or two here.

The legal counsel to the ministry has issued again the same amendments as we received from the government before, but they have been reordered in a way that will hopefully speed up our clause-by-clause considerations on Tuesday. They follow the order of the bill and clearly enumerate which is a new amendment, etc.

Ms. Hart has been kind enough to say that she is ready to respond to a couple of questions that were raised. Perhaps we could start with those just for the information of members.

Ms. Hart: Mr. Chairman, you had a question about the tardive dyskinesia clinic.

Mr. Chairman: Right.

Ms. Hart: Jutta Auksi, project officer in the mental health operations branch of the Ministry of Health, has some information for us on that.

Ms. Auksi: First, I would clarify that the word "clinic" may be a little misleading. This is the consulting service on tardive dyskinesia. It was established recently, on February 20, 1987, but the service has to date seen 50 patients. There is one psychiatrist responsible for the service, providing the service five half days a week.

The intent of the service is to provide a more specialized kind of service for patients who have developed this condition. The intent is to confirm whether the diagnosis of tardive dyskinesia is in fact correct or whether something else is happening in the case and also, if it is tardive dyskinesia, to assist the attending physician to either eliminate or moderate the effects of that disorder.

Mr. Chairman: Thank you very much. Follow-up questions on that?

Mr. Reville: I wonder if it might be confirmed that tardive dyskinesia is a disorder that is directly related to the use of psychotropic medication.

Mr. Chairman: Do you feel competent to respond to that?

Ms. Auksi: I think I would prefer a medical person to say that.

Ms. Hart: I think we are going to have to go back to the drawing board and get an answer.

Mr. Chairman: It is something that could be posed to our next presenter or to the Ontario Medical Association members who are appearing before us.

The second matter?

Ms. Hart: The second matter had to do with some statistics, which I believe Mr. Reville raised, about involuntary hospitalization in Ontario and in Nova Scotia. Ms. Auksi has done some research and compiled some statistics. We have copies for the committee. Ms. Auksi, perhaps you would speak to them.

Ms. Auksi: Sure. The reference to Nova Scotia triggered in my mind that, last year around this time, I had received a copy of a brief that had been presented in Nova Scotia by Dr. Richman, who was in the audience at the hearings on Tuesday. He had presented some statistics to a Canadian Mental Health Association forum on proposed revisions to the Nova Scotia Hospitals Act on March 7, 1986.

The data that Dr. Richman presented were the only source I had for Nova Scotia data on involuntary hospitalization, and so I relied on his statistics. These were for 1983 to 1985. The Ontario data he provided were in fact based on our hospital inpatient data, which are published every year by the Ministry of Health. I took the information he provided, but adjusted it very slightly in certain ways, to make it more readily comparable to the Nova Scotia data.

If you have the figures in front of you now, I could maybe refer you to the far-right column. That is the combined 1983-85 data. The most directly comparable figures for the two jurisdictions would be the psychiatric hospitals data, because Dr. Richman said he was unable to get general hospital psychiatric unit data for Nova Scotia. Therefore, we can really only compare psychiatric hospitals in Ontario with psychiatric hospitals in Nova Scotia.

In Ontario, over the two years, 1983-85, in the psychiatric hospitals there were total admissions of 36,816. Of those, 12,461 are described as involuntary admissions, and I will refer to that a little bit more in a moment. That would be 33.8 per cent of total admissions to psychiatric hospitals. If you jump down to Nova Scotia, you will see that in Nova Scotia psychiatric hospitals total admissions were 5,403, involuntary among those 3,802, for a percentage of 70.3 per cent. Now, that would appear to be more than twice the committal rate for Ontario.

I have tried to find out from Nova Scotia--and I spoke today to the head of mental health services in Nova Scotia--whether there was anything to explain, any kind of elaboration on these statistics, whether there was anything we should take into account. He said, in fact, that they have been

aware of these figures and are looking into the numbers, but he did not have any reason to say they were absolutely wrong.

The one concern he had--and this is something that you should note for Ontario as well--is that these figures actually represent people entering the hospital for the psychiatric assessment. Now someone who is assessed for psychiatric committal is not necessarily committed after that process. In fact, some statistics that I was looking at not very long ago suggest that about a third of the patients who go for the psychiatric assessment are discharged within five days. This is prior to the Bill 7 amendments, which would suggest that those people probably were not involuntarily committed. One can probably assume that if one is looking at involuntary committal, these figures are actually somewhat inflated for both Ontario and Nova Scotia.

I guess I should add the one other change I made from Dr. Richman's figures for Ontario. He had included Lieutenant Governor's warrant patients and court orders in the Ontario data. He had not done so for Nova Scotia and so I took them out of the Ontario data as well. Basically, the comparison asked for by this committee is the figure of 33.8 per cent for Ontario and 70.3 per cent for Nova Scotia and it would appear that the reverse is true from what was suggested in committee, that in fact Ontario has a substantially lower rate of committal.

Mr. Chairman: Thank you. I will not encourage any discussion on this at this point. As we are running a little late, we will leave that until we get to clause-by-clause so that we can get to our first deputant who has been waiting patiently.

This is Dr. Mark Ben-Aron of the Ontario Psychiatric Association. You have all now been distributed his presentation to us. Our approach, generally speaking, is to have you make your presentation any way you would like and then I will conduct questions following that. Our one limitation we basically have today is time, unfortunately, because of the nature of this committee; so I am going to have to try to keep people to about 20 minutes or so for the total package.

ONTARIO PSYCHIATRIC ASSOCIATION

Dr. Ben-Aron: Keeping that in mind, you may have to customize my presentation, Mr. Chairman. I will not be offended at being cut off or redirected. To begin, let me thank you and the other committee members for inviting our organization, through me, here today and giving us this opportunity to share with you our thoughts and concerns about the provisions of Bill 190.

It is my hope to reflect the sentiments of my organization, which is comprised of more than 800 psychiatrists living and practising throughout Ontario.

Undoubtedly, some of the comments I will make today, the committee will have already heard and/or will likely hear again in the very near future, perhaps in the next half-hour. Hopefully, however, a repetition will not have the effect of boring you, but rather will serve to emphasize the weight of our concerns with respect to the issues being discussed.

Essentially, it is my intention to make three points only and to share with the committee some case vignettes, time permitting, that we hope will bring to the committee's attention an understanding of the nature of our work

and the potential ramifications of Bill 190 not being proclaimed or the ramifications of its being proclaimed.

To begin with, we would like to laud and strongly support those provisions and sections in Bill 190 that provide a mechanism to once again make available possible treatment for individuals who suffer from mental illness. As physicians who have to work sometimes with very ill people, we strongly support the existence of any mechanism that allows us to provide treatment to relieve our patients of their sufferings.

The second point we would like to make at this time is that we are, however, concerned that Bill 190 specifically proscribes and prevents from use certain named treatment modalities; that is, electroconvulsive therapy and psychosurgery.

It is our opinion, from the pragmatic perspective, that having a law address specific treatment approaches sets and perpetuates an undesirable precedent, even if that treatment approach is socially controversial and especially if there are no validated scientific reasons to proscribe its use. This would be particularly the case, in our opinion, with respect to ECT. It would seem more appropriate to safeguard patients and the community from abusive or inadequate treatments by educating individual clinicians as to how to prescribe and administer treatments in accordance with optimum standards of clinical practice and to be responsive to new knowledge that may lend to improve standards.

The maintenance of standards in medical practice is not only, of course, a matter for individual members of the treatment profession, but is as well a matter for that profession's governing college and through it legislative regulation may be effected. Otherwise, we believe there exists the very real possibility that patient care becomes determined by social policy and Zeitgeist rather than by patient needs and a high standard of scientifically validated methodology.

For those of you who may have read the Charles Clark report on ECT in Ontario, I wish to give due acknowledgement to the comment I made above. It is excerpted in part from that document, so if anybody thinks those few words are familiar, he is probably right.

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With the specific treatment proscriptions as contained in Bill 190, there exists the possibility that the Mental Health Act of Ontario will become a manual of psychiatric therapeutics. In our opinion, this would not be of assistance to either the patients or the health care professionals charged with patient care. Furthermore, as new developments occur in the field of medicine, the Legislature would constantly be facing the possibility of revising its statutes, essentially to keep up. The risk would be that until such statutes are revised, patients would be prohibited from benefiting from the most recent treatment advances. For example, next year electroconvulsive therapy may be found to have exclusive and specific curative benefits for a certain type of mental illness, perhaps associated with criminal offences. Would such a discovery, if it happened, necessitate a redrafting of the Mental Health Act of Ontario to accommodate its clinical use? How long would be the delay between the time the discovery was made and the act were redrafted and proclaimed? This example, of course, is not very good, but hopefully it makes the point of our concerns.

The third matter we would like to address is that of the patient's representative. While we believe that the concept of patient's representative as it is intended in the act is a good one, the parameters contained in the act defining the patient's representative are inadequate as they now stand and leave open many possibilities of patients being wittingly or unwittingly abused, patients' family members being abused, patient-family relationships being strained or even destroyed and a number of logistical problems that could delay patient assessment and treatment.

It is our opinion that at the very least there should be some mention of criteria of eligibility for individuals to meet in order that such individuals be permitted to act as a patient's representative, criteria beyond the representative being 16 years of age and competent. We also believe there should be a list of obligations, responsibilities and liabilities imposed upon an individual who takes on the role of a patient's representative. And finally, at the very least, we believe there should be a mechanism put into place to provide the opportunity for interested parties concerned with the designation of a particular patient's representative to voice their concerns and/or objections before a judicial or ministerially appointed impartial tribunal. Such a tribunal would have the power of making the final decision as to the suitability of a particular patient's representative whose role is being contested by interested parties.

At this point, and again being mindful of the time, I would like to go quickly through three case vignettes. As I go through each, I would like to highlight for the committee some of the very practical issues--these will become self-evident as we go through the cases--that might arise in the face of the Mental Health Act laws in Ontario currently in place and how they might be affected by the passing of Bill 190 or its failure to be passed.

The first case is that of Mr. X. Mr. X is a 23-year-old Caucasian man who was admitted to hospital through the emergency department. He was brought there by police in mid-winter. The police had been called to the neighbourhood where he was picked up because members of the community had noticed that despite the extreme cold of that winter day, Mr. X was walking around without shoes and without a coat and seemed to be quite lost.

On being approached by the police, Mr. X was able to give his name and indicated more or less where in the community he was residing. The police, upon taking him home, found that he was a person suffering from a mental illness and had previously been an inpatient at a local hospital. They also ascertained from the other residents in the home that for the past several days, Mr. X was not making much sense and nobody really knew why he was wandering around half-naked in the cold snow.

At that point, the police brought him to the emergency department. Once there, the on-duty psychiatrist attempted to assess Mr. X. He did not communicate with the doctor. The physician's notes indicated that all he could get from Mr. X were a few inaudible monosyllabic sounds. When pressed for responses to questions, Mr. X would merely turn aside. On several occasions, he tried to get up and leave the hospital, but was able to be persuaded to remain. After a considerable effort had been made, it was verified that Mr. X had been a patient in an Ontario hospital where he had been diagnosed as suffering from schizophrenia. On the basis of this and out of concern for his potential for bringing harm to himself, given that he had been found wandering aimless and inappropriately dressed in the cold of winter, he was admitted to one of the hospital's inpatient units. Once there, he continued to be totally uncommunicative and isolated himself in his bedroom. After two days of

persistent efforts on the part of the staff to approach Mr. X to determine more fully what was wrong with him, without success, and because he was refusing all food and fluids, it was felt urgent that this individual be given a trial of treatment. The information available suggested that in the past he did respond to antipsychotic medications.

When treatment was offered to Mr. X, he would respond to such offerings by simply turning his head or standing up and walking away from the physician. After a day of these efforts, and out of a great concern for the fact that Mr. X was not eating, and especially because he was not drinking, it was decided that an effort would be made to obtain consent to treat from the review board. Next of kin were searched for, but not found. Within 48 hours, a review board hearing occurred. Mr. X was asked to attend the meeting, but again, in response to these requests, he would just turn his head away, stand up and walk off. The review board wished to meet with Mr. X. He refused to come to the boardroom where the hearings were going on. The review board came to the inpatient unit. Its members were introduced to Mr. X; but he responded merely by looking at them, turning his head and walking away.

No specific comments could be made by any of the attending staff as to Mr. X's mental state, inasmuch as he really had not said anything to us. It was our opinion, however, given his past history, as available, and given his current presentation, that he was most probably suffering from an acute psychotic state. Of extreme concern was the fact that this man was at risk for doing serious harm to himself by virtue of the fact that he was not getting adequate food and/or hydration. The review board was not able, based on the information put before it, to grant consent for treatment.

To us this case highlights how difficult it is, sometimes, to manoeuvre a real situation into existing legislation. I present this case almost as a way of expressing our own frustration at dealing with very difficult clinical matters and with the understanding that it is not easy to come up with laws that fit everyone.

With respect to the review board's refusal to grant consent, I would imagine that they were doing the exact right thing based on what they were permitted to do and given the laws that they were working with. Their refusal to give us consent does not necessarily reflect the fact that they felt treatment was not justified, nor does it necessarily reflect that this man was not ill. I think the review board was extremely sensitive to the fact that we had a man on our hands who was dying right in front of our eyes, and that we felt we could not do anything about it. Perhaps the review board's difficulty was our inability to adequately put our case before it.

Perhaps I could stop there and just entertain a question or two, and we can go on to the other cases. They are a bit longer.

Mr. Chairman: The difficulty will be the time unfortunately.

Dr. Ben-Aron: Would you like me to proceed then?

Mr. Chairman: It might be wise if you try to just give us a brief run through of the other two examples, which I have had a chance to read.

Dr. Ben-Aron: Again, both of other examples highlight situations involving people who are extremely ill. The very next example essentially involves a man who suffered from paranoid schizophrenia, who comes from a rather good family and who because of his illness ended up for a prolonged

period of his life living in a deteriorated state and finally ended up in jail for a number of months.

Again, because of his illness, he was menacing and threatening to those around him and on one occasion actually wounded another member of the community in which he lived. Specifically the wounding was that he shot one of those air pellet guns and hit a passerby in the eye.

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The case was particularly sad inasmuch as this gentleman, when receiving treatment, did very well. He was a totally different man when his mental state was stable than he was when he was acutely ill.

It was in the ill state that he would take the position that there were no problems with him but that people were out to get him, and, as part of that overall illness, he became very noncompliant about the use of medication.

His family would authorize treatment, but the family felt very badly about having to force upon somebody they loved, although that person was sick, a treatment, or any kind of experience, that this loved one did not want.

Are there any questions about that particular case?

Mr. Chairman: There probably will be, but just give us the last one.

Dr. Ben-Aron: With respect to the last case, let me just read that one through. This is the case of Mr. WFG. He is a 62-year-old Caucasian, married man, born in Ireland, who came to Canada with his family at the age of nine years. He went to school in Toronto and in 1941 joined the Canadian Armed Forces as part of the war effort. He was stationed on home defence duty in Newfoundland, and in 1943, at the age of 29 years, suffered from his first mental breakdown. He was transferred from his posting to a hospital back in Toronto and was ultimately diagnosed as suffering from a severe depression. He was treated successfully with a course of electroconvulsive therapy and upon recovery received an honourable discharge from the army for medical reasons.

After his release, about which he felt very badly, he returned home, got a job and married his childhood sweetheart. He did well until the late 1950s. By this time, he had joined a large media information wire service company and had a responsible job with them. His daughter, the couple's only child, had been born and his life and family were going well. The "breakdown" that occurred in the late 1950s was once again diagnosed as a severe depression and was characterized by disturbed sleep, high levels of anxiety, loss of energy, loss of appetite, general loss of interest, and progressive deterioration in his job performance, finally culminating in his retreating to his bedroom.

With his family's encouragement, he was again hospitalized and treated with ECT. As before, he demonstrated a good response and was soon discharged. After his recovery, he returned home to his family and to his job, which was waiting for him.

His next episode of depression occurred in the early 1960s. This episode was much milder, and after about six to eight weeks it passed without the need for hospitalization or ECT. He continued to function satisfactorily in the community. At work he was a very popular and well-respected colleague. His wife, a bright and articulate woman, who was an active volunteer for one of the local general hospitals, loved him very much and described their marriage

as very good. His daughter, also a bright child, was devoted to her father. Mr. WFG's siblings, which included lawyers and successful businessmen, all thought well of him.

In the early 1970s, he began having more frequent attacks of insomnia and anxiety episodes. He would try to fight them off and continue with his life as normally as possible. However, by 1974, he again suffered a full-blown depressive episode and was diagnosed as suffering from a major affective disorder, unipolar depression. He had been placed on a tricyclic antidepressant by his family doctor when his symptoms started to reappear. He was rushed to the emergency room of the local general hospital one Saturday night because his urinary function had become obstructed as a side effect of the antidepressant that he had been given. While in the emergency room, he was seen by the resident on call for psychiatry and thereafter was admitted for his depression inasmuch as it was felt to be sufficiently severe to justify hospitalization. At the urging of his wife, he accepted the recommendation that he go into hospital and, as I say, he was admitted.

In view of his history of good response to ECT, this treatment was suggested to him. He, however, refused because he was afraid that memory impairment would interfere with his job. At work everything had become computerized, and he was concerned that he would lose his newly-acquired work skills. It was agreed that ECT would not be used, particularly in view of his strong resistance, and instead an alternative antidepressant would be tried. It produced blurred vision and made it difficult for Mr. G to read. He also experienced dry mouth as a side-effect. This would make him intensely uncomfortable and served only to raise his anxiety level, which at times would become overwhelming for him. As a result, he became obsessed with the dry-mouth problem. Finally, after almost two months of antidepressant trial, no visible improvement was noted, and a course of ECT was agreed to by him.

As had been the case in the past, Mr. G responded quickly and well. His mood improved dramatically, he became less reclusive, socialized more and became more attentive to his grooming and hygiene. His sleep improved, his mood improved and his anxiety levels diminished. However, he did report that he felt he was not as mentally sharp as he had been and also believed that his memory function was not as good. In view of his improved mood, he was discharged from hospital and returned home for a short period of convalescence. Thereafter, he went back to work and his wife reported apparently no difficulty.

He was followed on an outpatient basis and did well for approximately two years. After the passage of this time, he again demonstrated deterioration in his mood state. He was again admitted to hospital and refused ECT treatment because he was sure it had impaired his memory and work performance. This perception was not validated by his wife, who did have input from his employers. He was amenable to antidepressant medication and was tried on a series of different antidepressants, all giving questionable results with respect to improving his condition.

After a two-month hospitalization, he felt that he had recovered sufficiently to be discharged. This was agreed to by the attending staff, despite their concerns about what they perceived as lack of improvement and also the concerns of his wife and family, who were not convinced that he had improved that much. For the next two years he was continuously followed on an outpatient basis. His mood never fully returned to its former well self. Throughout that time period, he was constantly maintained on different categories of medication, except for a several-week interval when all his

medications were stopped because he had been admitted to a general hospital because he had had a heart attack.

Even after this event, he was restarted on medication because it was perceived that his need for treatment was so great. He was also seen very regularly in outpatient psychotherapy for support and reassurance, which he found extremely necessary in order to be able to cope with his life and to continue to work in the face of the intensity of the depression he was experiencing.

In the late spring and early summer of 1978, his condition, however, had deteriorated to the point that he was being seen on almost a daily basis and had been tried on, but none the less had not responded to, a full armamentarium of medications, including tricyclics, monoamineoxidase inhibitors, tranquilizers, lithium, low-dose neuroleptics and tetracyclics, which was the drug of choice for antidepressant effect after the heart attack.

At the end of what was probably his worst week, he was told that it was really necessary that he come back into hospital and should probably have ECT to help him with what had become his intense state of agony, not only his intense state of agony but his family's. It was a very difficult time for them, watching this loved one go through the suffering that he was enduring. It was clear that he was in terrible pain, not able to sleep, had lost over 20 pounds of body weight in a short interval and looked quite emaciated. He was constantly anxious and obsessed with negative, self-denigrating and derogatory thoughts.

On the Friday of that worst week, he finally agreed he would come in, but asked that his admission might be postponed until the following Monday, inasmuch as he wished to spend the weekend with his wife and daughter at home. This was agreed to. On Monday morning, his wife called to say that while she was out getting a pack of cigarettes on that Sunday afternoon, Mr. G had hanged himself. He was pronounced dead on arrival at the local general hospital.

In essence, the point of that vignette is that I think Mr. G had less than optimum care from the attending physician. Why? It is hard to say why. Perhaps the attending physician was swayed by nonmedical, objective, scientific reasoning in his management of this poor man and perhaps was more swayed by a desire to accommodate this individual by concerns of how aesthetic ECT was or was not, and despite the physician's knowledge that this man had responded well to ECT in the past, had allowed himself to participate in less than optimum care of this man. In my opinion, this man paid the price of the physician's error.

With respect to this meeting, I think in some ways the incorporation into law of a specific proscription of a treatment modality is an error that is analogous to the error made by this physician, and my concern is that the patients--at least some patients--will pay the price.

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To conclude, I would like to emphasize the point that to have in place a law that demands involuntary confinement of a psychiatrically ill person, and at the same time does not provide for the opportunity of that person to be treated, is in essence to preserve a person's civil rights to be ill and to be made a social outcast, as often is the case, or to be imprisoned in a state of emotional pain and suffering. It, in effect, may condemn an individual for

interminable periods of time to a lesser state of being than he or she is capable.

To force people against their will to be in hospital because of illness, without providing for a satisfactory way of treating them when that is possible, is to needlessly warehouse people for unnecessarily prolonged periods, patients whose only crime is that they are ill. It also has the effect of diverting the energy of treatment staff, particularly nurses but also occupational therapists, social workers, psychologists and physicians, from patients wishing treatment and benefiting from treatment to taking on the role of social controller and custodial officer.

Specifically, what I am saying is that demand placed upon staff to attend to an involuntary ill person who is not going to be treated results in that staff being diverted from giving adequate attention and care to other patients who may be housed in that same facility who do wish treatment. The second vignette addressed that more fully.

It is, in effect, to inflict unnecessary pain and agony on not only the patients refusing treatment for their illness but also sustaining copatients, with whom the unwilling patients are housed, in their illnesses for longer than necessary. It inflicts unnecessary pain and agony on the patients' families. It creates potential admission backlogs because of inadequate bed availability, and this in turn places added stresses on other patients, their families and those patients in their communities. The list of difficulties as indicated by my examples could go on to include police officers, courts, jails, community service agencies, etc.

From a cost perspective, every extra day of hospitalization, as far as I am aware, costs someone, be it government, taxpayer, patient's family, at least an extra \$400 per day. How long such extra hospitalization could continue in the absence of treatment, given the course of some of these kinds of illnesses, is hard to say. I can only share with you that, as a medical student, I worked for a time in a state hospital in Pennsylvania. There they still had back wards and some of the patients had been in hospital for over 40 years; a lot of them not because they refused treatment but because we just had no treatment for them.

I am open to questions.

Mr. Chairman: We are a little limited in time, but I will do the rotation that we agreed to earlier.

Mr. Callahan: I am glad to see that at least in your report, although you suggest that electroconvulsive therapy should be continued, you recognized that perhaps its results are unknown and not scientifically able to be appraised. I do not want you to comment on that; I am commenting on it.

As you know, Bill 7, which expired June 1, put us back where there is no override on consent. We are presently in that until Bill 78 is passed in the Legislature. You are a practising physician, obviously. Have you had any comments from your confreres as to the difficulties, the potential dangerous difficulties, they may be experiencing as a result of this withdrawal of the override at this time?

Dr. Ben-Aron: With respect to specifics, I have not been approached by any of my colleagues to share specific cases, only their great concern about what they will do when such cases come to their care.

Mr. Callahan: All right. I would like to know if you know how the override originally came in. It is my understanding that a health care worker was assaulted at one of the provincial institutions, and, as a result of that, there were pressures brought, I think, by the Ontario Public Service Employees Union to have the override provisions put in the act that Bill 7 subsequently was to change. Is that your understanding?

Dr. Ben-Aron: I am sorry, I am not familiar with those statements.

Mr. Callahan: Fine. Those are my questions, Mr. Chairman.

Mr. Reville: I am familiar with the psychiatric vignette approach to this problem. In the cases that you mentioned to us, could you tell us whether any of the patients whose histories you have described were, in your opinion, competent or were they incompetent?

Dr. Ben-Aron: This is my opinion and does not address the definition of competency, which is a very difficult issue, but in my opinion the last patient was competent. With respect to the first vignette, I do not know. I do not know if his refusal to eat was fully, absolutely a reflection of a psychotic illness--which, in my clinical opinion, it was--or whether it was just social protest. He never spoke to us. I can only go by his behavioural repertoire and the little bit of history that we had made available to us from his previous hospitalization.

With respect to the middle case, which I did not read--

Mr. Reville: This was the young fellow with the air gun?

Dr. Ben-Aron: Yes. In terms of competency, there again we fall into the very difficult area of how one defines it in the sense that this man was able to say to me that it was my clinical opinion that he suffered from schizophrenia. He could as well give me an idea of what my concept of schizophrenia was. He certainly could tell me what I was doing with respect to recommending medications. He knew them. He had had them in the past with success. He was able to understand the potential side-effects. But during his acutely ill state, in my opinion, because of his illness, he was not accepting that he was ill and that his ill state of being was a normal state of being, and, in fact, those things that he believed, which I construed as delusional beliefs, he held as reality.

Given the truthfulness of that reality, he understandably said: "I do not need to be treated. There is nothing wrong with me. You people are harassing me. Why do you give me pills? These people are harassing me. You take the pills." Now, is he competent? I do not know.

Mr. Reville: So in the first two cases, you believe they might have been incompetent?

Dr. Ben-Aron: The first one might have been, the second one might have been, the third one I think not.

Mr. Reville: So, in the case of the first two, you could enforce treatment because they were incompetent, except for the fact that the family in the second case said no. Right?

Dr. Ben-Aron: With respect to the first one, if the review board had agreed, we could have. We tried that route. They refused.

Mr. Reville: You would not have had to apply to the review board, would you?

Dr. Ben-Aron: With respect to?

Mr. Reville: The question of competency.

Dr. Ben-Aron: We had no permission to treat this man. He was not able to give us permission.

Mr. Reville: That is right, but you felt he was incompetent.

Dr. Ben-Aron: Right.

1650

Mr. Reville: Then why did you not apply for an incompetency finding at the review board?

Dr. Ben-Aron: This was raised with the review board and it just deferred the matter. All the facts that we had available were presented to the board and it just said, "Sorry, we cannot help you."

Mr. Reville: So in your view the review board screwed up.

Dr. Ben-Aron: I do not know whether the review board screwed up.

Mr. Reville: I want to talk about the last case, in which the gentleman was competent. You indicated that you thought perhaps he had less than optimum care. I am sure you do not mean that the physician was negligent. You did say that the physician, perhaps, was basing his or her approach on nonscientific reasons.

Let me put it to you that the two reasons the physician had were, one, WFG responded well, in his opinion, to electroconvulsive therapy. WFG felt that ECT made him less sharp. Ergo, WFG did not want ECT. Those were two scientific reasons. The fact that WFG later committed suicide was based on a choice that WFG made. He did not want to have ECT. He had had every psychotropic drug known to man, it appears. So, basically, is it not the problem that psychiatry did not have anything to offer this person?

Dr. Ben-Aron: It is my opinion that psychiatry did have something to offer this person that would have been very helpful; that is, ECT. He did not want to help himself in his acutely depressed state.

Mr. Reville: But he was competent?

Dr. Ben-Aron: Yes, I believe he was competent.

Mr. Reville: I guess that is one of the tragic problems for which neither you nor I has an answer, but it will sometimes happen.

Dr. Ben-Aron: I would agree.

Mr. Reville: Do you not think it would have been better to force it on this guy?

Dr. Ben-Aron: When you say, "better"--

Mr. Reville: He would be alive perhaps.

Dr. Ben-Aron: He would be alive.

Mr. Reville: But less sharp?

Dr. Ben-Aron: I do not know that he was less sharp. That was only his perspective. It was not validated by his family. I do not know from his wife's point of view, or his daughter's point of view, or his family's point of view, if the end was better.

The Vice-Chairman: Mr. Reville, if you are finished, I think, given the hour, unless there are some really urgent, pressing questions from another member, we should thank Dr. Ben-Aron for his presentation here.

We now have Dr. Saunders from the Ontario Medical Association with us. Will you come forward please, sir? When you are seated, please introduce yourself and your two colleagues, so that Hansard may pick up the information that we need and so that we may know who is with you.

ONTARIO MEDICAL ASSOCIATION

Dr. Saunders: On behalf of the Ontario Medical Association we thank you and the committee for allowing us the chance to come and talk to you about Bill 190.

I have with me today, representing the OMA, Dr. Hoffman and Dr. Klein, both of whom who are practising psychiatrists in Toronto. Dr. Klein will lead off and then we will proceed.

Dr. Klein: Thank you for the privilege of being here. I work as the clinical director at the Toronto Western Hospital and I am on staff at the University of Toronto.

Before I comment on Bill 190, I wish to comment on something that has been said to this committee in the last few days. A group came before the committee and indicated that the Attorney General's committee on substitute decision-making was indeed discussing issues that are relevant to Bill 190. In other words, it was discussing the issue of the treatment of involuntary patients who are competent.

This is, indeed, not so. The committee has never discussed such an issue. The committee has never voted on such an issue. I brought with me the confidential report of that committee, which I cannot release to you, but I will read one sentence relevant to this.

"The Mental Health Act governs the extent that the state permits interference in the lives of those with severe mental disorders who are causing, or at imminent risk of causing, serious harm to themselves or others."

This report does not deal directly with those issues.

With respect to Bill 190, I would like to focus on the narrow issue of forced treatment of involuntary but competent patients.

At this point, at least to us--I say at this point, and I can clarify that later--it seems the best opportunity for a combination of physicians exercising reasonable judgement and as rarely as possible infringing on individual rights.

The argument that Bill 7, as it now stands, infringes minimally on patients' rights is a somewhat bogus argument when you take a look at those jurisdictions that currently do not have an override. There are several jurisdictions in the United States and at least one in Canada. Indeed, what has happened in those jurisdictions is that the powers granted to physicians are much wider than they are in Ontario. I am not sure that has been brought to the attention of this committee.

In fact, the definition of incompetence in such jurisdictions includes such things as symptomatic encroachment. By that, I mean that the nature of the illness may infringe upon the person's judgement such as to render him incompetent; so a very wide number of people can be considered incompetent. Also, illnesses where a person stereotypically refuses treatment are included in such jurisdictions.

Nowhere, and I wish to make this point very clear, is there a combination of a narrow definition of incompetence and no forced treatment, because of the chaos which would be created within the clinical system.

I brought with me two--if Dr. Ben-Aron's vignettes were vignettes, these are micro-vignettes--cases to discuss with you today. The first one is that of a middle-aged lawyer who became psychotically depressed. He was made involuntary and he refused to eat. He refused all treatment.

What happened is that this poor man's wellbeing deteriorated to the point that his immunological status and his health were at severe risk. He understood everything that was being discussed with him. He said, "That is fine." He understood the treatments, he could explain them very well; but he did not want to have any treatment because he just wished to be left alone to die.

Under the current definition and the lack of prevailing standards in Ontario, it would really be very difficult to say whether or not he would be seen as competent or incompetent by a review board, which makes it very complicated for us because we can go to a review board knowing this man is going to die if we do not treat him, and then there is nothing we can do.

The second case is an extremely difficult case on which we have now had 14 psychiatric opinions. This is a middle-aged man who happens to have schizophrenia and requires dialysis. The problem with the schizophrenia is that he believes he does not require the dialysis, because when he is not being treated for schizophrenia he believes he has regenerated his own kidneys. What happens is that he fails to show up for his dialysis. He has to be brought into hospital and made involuntary. He is, at that point, competent in every other way except that he believes his kidneys are being regenerated. If we are able to treat him by forced treatment, then he will agree to dialysis.

By the way, although under the Public Hospitals Act you can sometimes move to save life and limb, there is no way you can offer a person dialysis under those circumstances. You have to have a co-operative patient; you cannot just walk in and say, "Here, have some dialysis." You have to have him agree to be still and have the tubes put in, etc.

If forced treatment is taken away, what will happen is that we will have to wait until this man becomes incompetent because his physical health deteriorates to such a point that then we declare him incompetent and treat him. However, at that point, what you should understand is that this man may

never recover because his health will have deteriorated to the point that we will not be able to bring him back to his previous state of health. He is the ultimate conundrum.

Mr. Chairman, I will just be quiet at this point.

1700

The Vice-Chairman: Who will succeed you?

Dr. Hoffman: I will. My name is Dr. Hoffman. I am the chairman of the Ontario Medical Association's special committee on mental health. I am also the head of the division of inpatient psychiatry of Mount Sinai Hospital. I am in private practice and I am on the university staff.

The medical and psychiatric response to Bill 190, to be current, is partly determined by events in the last two weeks. Unproclaimed portions of Bill 7 were brought into effect three days ago. An attempt by the government, I understand, to delay the implementation of the controversial aspects of Bill 7 was thwarted. Therefore, it is now possible and even inevitable that in the next year I will have a mentally ill patient in Mount Sinai Hospital who is dangerous to himself and others and this patient will not receive the recommended and needed treatment that would return the patient to the community.

Thus, Mount Sinai Hospital and the psychiatric unit will become a jail and I will become a jailer. These patients can molest other patients, attack staff and attempt to kill themselves and we will have to tie them into beds with straps and locks and use medication for restraint and sedation but not for treatment.

If the patient is not physically dangerous but is only yelling and screaming at the top of his lungs in the middle of the night and frightening 21 other patients and my two young female staff who work by themselves during the night, we will not even be able to restrain these patients because they are not a physical danger.

The hospital will have turned into bedlam, the wards into warehouses. Instead of providing treatment while protecting the patient's rights, the law has removed treatment and given the patient the right to remain psychotic or suicidal and to interfere with the therapeutic environment for 21 other patients on my ward.

How can a patient who is certified but competent and refuses treatment interfere with the health and recovery of 21 other patients? Come and spend a night on my ward; tonight. Can you picture yourself there? Do you feel tired and overworked, depressed, lonely--picture that--troubled by the demands of work, family and personal needs? Do you feel near the breaking point? Any of us could be there except for the grace of God. We all have our limits. You want some peace, rest, someone to talk to, some advice. Now picture yourself resting quietly in your room next to a 17-year-old child who weighs 75 pounds and talks constantly of her wish to die. At least, you think, she is in the right place on this ward; psychiatric. Then you learn that she has the right to refuse treatment and die in that bed next to you.

Or let me put you in the same room as the paranoid patient who lies awake all night in pain from the poisons that the KGB have put into his teeth. You can go to the nurses for reassurance at two o'clock in the morning. There

are two nurses on the ward. And when you are on the ward, who do you want to take responsibility for the peace and quietness of the ward? Perhaps one of the civil rights lawyers will come up and calm down the ward and soothe your pain.

As a voluntary patient, you do not have to stay in hospital. You can sign out and return home, perhaps to your husband who has been beating you recently or to the memory of your son who committed suicide last month. But if you sign out, do not expect to come back if things get worse at home. You know you had to wait six to eight weeks for admission to Mount Sinai Hospital, because I have not had a free bed in over a year, so the waiting list is six weeks.

Now, with a single long-stay patient on the ward refusing treatment, the wait will likely be longer; eight to 10 weeks. So, come to my ward tonight. Honestly, I can let you stay there; where we may have to ask you to share spaces with patients who are being detained and restrained because of dangerousness, which the physician does not have the authority to treat.

A second problem with the current legislation exists around the definition and test for incompetency. Physicians find the present definition of incompetency in the Mental Health Act very restrictive. If you look at page 2--it is page 2 in the handout; it has number 8 at the top because it is actually the last page of my speech--the current definition uses the words "understand the subject matter" and later on "appreciate the consequences." You can play a lot of games with these words.

It says "understand the subject matter," so this means a patient can say: "Schizophrenia means you are crazy, but I do not have schizophrenia. Schizophrenia means you have delusions, but my thought that the KGB has put poison into my teeth is not a delusion." So, in fact, physicians would like a narrower definition of competency and a broader definition of incompetency, something along the lines of the last definition on that page that would go along the lines of "understand and appreciate the subject matter." In psychiatric and legal jargon, "appreciate" has come to mean that you can apply factual information to your own case. That comes from the Criminal Code of Canada. It has that hidden meaning that you may or may not be aware of and we would like the words "understand and appreciate" to be used liberally.

On the other hand, we are aware of a whole wave behind us who want to change the definition of competency and make it broader so that it encompasses more and more psychiatrically ill people. Therefore, this very small number will, if the civil rights lawyers have their way, become a large number of people on the ward who would be competent but who would be dangerous and refuse treatment. The fact that there may have been only 10 or 16 or 24 cases in the past year has nothing to do with the reality of the next step, which is what the civil rights and the anti-psychiatry group are all arguing for.

We frequently see lawyers trying to obtain the release of actively psychotic or suicidal patients from the ward. They know they are suicidal. They know they are homicidal. The lawyers come in with their perspective: "My job is to get the person out." When these people are released, we increasingly see articles in the paper, not criticizing psychiatrists but criticizing Parliament and the government. I have included a couple of the papers for you. They are articles by social critics and ministers and others in the community who have to care for these people. We are aware of scores and hundreds of letters being written to the minister by relatives not angry at psychiatrists but angry that they cannot get the needed treatment for their ill relatives.

All of these groups, as well as coroner's inquests--read the coroner's inquest of Carol Ann Johnston --are critical of the system, the mental health law system that limits the authority of physicians to use their knowledge and expertise to provide the best possible treatment.

Again, we are aware of a continuing effort by legal and advocacy groups that would further tighten the definition of incompetency and increase the tragic irony of the effects of a mental health law that provides for incarceration without treatment.

Physicians feel strongly that the Mental Health Act needs an introduction that states the purpose of the act. On page 1 of my handout, I have copied for you an introduction to the act as drafted by the interprovincial uniform law conference, which has distributed several drafts of the uniform mental health act that is meant to be a guide for all provinces. Having such a purpose at the beginning of the act is a potent reminder to all of us that the primary aim of a mental health act is not to prevent hospitalization or necessary treatment but to allow patients to be treated while we are protected and while their rights are being maintained.

Unfortunately, I see too many lawyers arriving on a ward yelling and screaming because they have interpreted their duty from the act as similar to getting their client out of jail.

1710

The psychiatrists in the province feel strongly that the current situation is tragically harmful to a small number of involuntary patients who need a substituted consent for treatment. It is harmful to other patients on a psychiatric unit, who have the right to a therapeutic environment, and it is harmful to the reputation of the psychiatric profession that does not, and perhaps will not, assume the duties of jailer without therapeutic reason.

We support those sections of Bill 190 that permit medical treatment as recommended by the treating physician and approved by caring relatives or impartial reviews.

Unfortunately, the importance of this one problem has not left me time to expand on the areas of Bill 190 that might not improve the mental health system. These include an anti-family bias to the legislation and the possibility that some patient representatives would be other psychiatric patients, Scientologists or others who would exploit the patient.

What should be the credentials of the patient representative? There are none in the present act. I would suggest that a patient representative should either have had personal contact with the patient in the past year, similar to the requirement for a relative, or be a lawyer.

That would stop certain people, literally ambulance-followers, standing at the front desk or coming on to the ward and signing people up. Certainly, I have had lawyers come on the ward to see one client and leave with three. It happens.

Who would assess the competency of the patient representative? They are not patients, so they cannot be examined. What would be the mechanism for dealing with problems? These are not addressed.

How can the patient representative indicate that he is willing to take

on the obligations and the responsibilities assigned? A relative has to sign a paper; why not the patient representative?

We question the wisdom of keeping electroconvulsive therapy from some patients who would profit from its use.

A major difficulty is the illusory belief that a patient's wishes when well should last for ever, even when the patient becomes sick and incompetent. Physicians frequently see patients, including other doctors, who initially say they would never accept radiation therapy for cancer. However, once they develop the cancer and start to experience the alternative of pain or chronic illness, they--we--change our minds.

Psychiatric patients are no different. One study interviewed 12 patients who tried to commit suicide by jumping from the Lions Gate Bridge--200 feet; clearly a serious attempt. All 12 patients survived. When interviewed, nine said they had changed their minds on the way down.

To make your wish when you are well should not be for all time, and yet this Mental Health Act implies that it would be for all time and the patient representative would not be able to act in the patient's interest but only on the patient's expressed wishes, as if they were fixed and built in stone.

These issues require much more discussion but are not as significant as finding an immediate solution to the problem of substituted consent.

I also have several cases, but we are running late. I will give them if you wish, but in the meantime I will wait for questions.

The Vice-Chairman: Dr. Saunders, do you have anything to add?

Dr. Saunders: Actually, I think it might be more profitable to hear some of the case presentations Dr. Hoffman has, if you wish, or maybe we can get into questions and then I can summarize at the end.

The Vice-Chairman: As you wish. Any questions from the committee? Mr. Callahan, you were indicating you wished to proceed with a question.

Mr. Callahan: I know we are running behind time. I think I would rather hear the cases. They may be more instructive than questions.

Mr. Reville: I do not think they will be instructive.

Mr. Andrewes: No one wants to answer this. I have been here now for three of the four days of hearings, hearing from various groups on both sides of the argument, but I really sense a tremendous mistrust between the advocacy groups and physicians. I wonder why that is.

The Vice-Chairman: Do any of you wish to respond to the query?

Dr. Saunders: Maybe I can be a little more general in trying to respond to that. Certainly, as physicians we are trained to diagnose and treat patients. That is our goal in life, that is our training and that is what we wish to do.

What we have seen over the past few years is a considerable shift in trust in physicians because in the past physicians were provided with the responsibility of admitting patients and taking care of them, but the

introduction of an adversarial atmosphere, especially into psychiatry, has created considerable difficulty for physicians, difficulty both with the people who have been interjected and with the whole approach. We are not trained to be adversaries. We do not wish to be adversaries. That goes against our ability to help our patients. Yet, when we look at review boards, advocates, legal aid and all the introductions into the system, that is exactly the approach that has been introduced. We are uncomfortable with that. We do not want to be part of it.

I think there is a changing attitude with physicians in general. That attitude is that if, indeed, that is the direction society wishes to go, if you cannot trust the physician to make the decision as to the needs and what is best for an individual patient who is sick, then let somebody else make those decisions. When you decide that this person does need treatment, then we are happy to provide the diagnosis and treatment and do what we feel is best for that individual.

I think this whole shift in attitude has caused this mistrust. As physicians, we see the mistrust is directed to us. "You cannot trust those people." It has never been demonstrated to us what wrong has been done in the past, but certainly that atmosphere is there. I think that perhaps is what is involved in this dichotomy of individuals who supposedly are both interested in the welfare of the individual who requires care.

Dr. Hoffman: I want to expand on that. I think that is probably a good explanation for our current dilemma; the introduction of the legal approach and particularly the adversarial legal approach into medical decision-making.

I find it interesting from a historical perspective because many of the arguments that you hear in the adversarial approach is to pretend that mental illness does not exist and to do things that would remove these people from society and from the community.

1720

One of the comments that was made in response to the introduction of Bill 7, the recently proclaimed section, by a member of parliament, was, "We are going to have to find somewhere else to send these people." Not a hospital now. That is very interesting, because through centuries what different societies have done is to pretend that mental illness does not exist and to send people away, in ships, to poor houses or other countries. In the adversary approach, that kind of argument rears its head again. They are saying: "Mental illness does not exist. You are wrong. This behaviour is not a form of mental illness. It is a form of social deviancy and they should be sent away."

I think you have to look at things both in the historical perspective where you are simply repeating an age-old battle and also look at it in the present context that we are having a lot of trouble making the mix of legal and psychiatry work.

Mr. Andrewes: What is your definition of mental illness? Is every mental illness treatable, from a physician's point of view?

Dr. Hoffman: Obviously not. I cannot teach all of psychiatry, all of what we know and all of what we do not know, in a simple answer. It is a lifelong process. We are trapped by our current state of knowledge, which is

expanding and where we both discover things and undiscover things all the time. The definitions are open for debate. In a legal arena, it becomes a bizarre debate where you are trying to look for a balance between social policy and scientific evidence. I cannot answer your question very easily.

The Vice-Chairman: Any further questions from the committee?

Mr. Callahan: You could probably give the 1870 definition that they use in the criminal courts, which is so outdated it is incredible. It is that the person does not understand the "nature and quality of an act" or know that it is wrong.

Mr. Reville: Is that the McNaghten rule?

Mr. Callahan: That is right. It is terribly outdated.

The Vice-Chairman: I think the parliamentary assistant has a question.

Ms. Hart: You have spoken strongly about the possibility of having numbers of people in hospital whom you cannot treat and who are, therefore, warehoused in a sense. I would like to ask you about a submission that was made to this committee on a previous day saying that once a competent psychiatric patient has refused treatment, it is very likely that with a supportive environment--counselling is probably the wrong word, but the essence of it was the proper support--that decision would be changed in favour of having treatment administered. Another important aspect of it, if my memory is correct, is that the patient would feel that he or she was participating in the decision to treat. Could you comment on that for me?

Dr. Klein: I would like to comment on that since that does have a lot to do with the area that I spoke about. In fact, there is a lot of data in this area. I mentioned the two kinds of situations where there is no forced treatment: the stereotypic refusal and the symptomatic encroachment where the symptom in fact impairs judgement and people are found incompetent. There is a third group of patients who are the group you are referring to. Indeed, there is a group that, if coaxed along or supported, will change its mind in favour of treatment. That is only one of the three groups that fall into the refusal category. We are not concerned about--

Mr. Reville: You have stereotypic and symptomatic. What is the third group called?

Dr. Klein: Very simply, people who refuse on a temporary basis and are talked out of it.

Mr. Reville: Situational?

Dr. Klein: Situational would be fine. We are not concerned about the third group. In fact, we usually do try to coax people in those situations. It is the first two groups that we are quite concerned about because in Ontario, it is not at all clear what you do.

Dr. Hoffman: I heard a talk given by the co-ordinator of the patient advocate office, some three years ago, in which he quoted a study from the United States that followed patients who had refused treatment and compared them to a group in a state mental hospital who had accepted treatment. He found that at the end of the year, the outcome was not dissimilar in that

something like 70 per cent of both groups got better. What he did not mention in his talk--and I asked for the reference and looked it up--was that the group that accepted treatment was out of hospital in three months. The group that refused treatment was out of hospital, on average, in nine or 10 months, roughly three months after they changed their minds and started treatment.

I think you pay a price for that. And yes, it is to be recommended from a self-esteem point of view. On the other hand, you lose tremendously social skills, work skills, family skills and financial resources. In 10 months, you may have nothing left. I guess this kind of law traps you into the one system, with no choice, with no weighing all of the parameters of: "Does this person have a job, or a family, or a life, or can this person take 10 months out of her life?"

So, in fact, the study is not as clear as I heard in the talk. Both groups will get out three months after they start treatment. It just takes six, or eight, or 10 months longer.

The Vice-Chairman: If there are no further questions from the committee, I thank the members of the Ontario Medical Association for coming before us and helping us with this particular inquiry.

Dr. Saunders: I wonder if I could just make a couple of comments.

The Vice-Chairman: If you can do that briefly. You still have a little time.

Dr. Saunders: Yes. One section we really have not talked about--and there are two or three things; I have a handout that I will leave for the committee members--is that of specifically mentioning a form of therapy, ECT, in Bill 190. We have some real problems with this. We cannot accept this as something that should be in legislation. Electroconvulsive therapy is a recognized medical treatment. Once the legislation starts excluding a recognized form of treatment, then we believe a very dangerous precedent is set. In doing so, it is the first step which leads to legislation dictating medical practice. I think it is important--and needs to be emphasized--that this raises considerable concern in us.

I will leave you copies of our paper. We offer our services to the committee as it gets involved in debate. If we can be of any assistance, we certainly would welcome this.

I would hope also, Mr. Chairman, that the absence of other members does not indicate that there is a lack of interest in this. I think it is very important. Although we do have problems with Bill 190, it certainly is important that it be considered seriously in order that we can take care of people as we have in the past.

1730

The Vice-Chairman: You should not consider absence of the members a lack of interest. They have a great many other preoccupations and they usually follow the transcripts and try to pick up on the proceedings (inaudible) as they can.

Could I ask Bob Dobson-Smith of the Citizens Commission on Human Rights to come forward. Are you on your own?

Mr. Dobson-Smith: Not really.

The Vice-Chairman: Not really, but you are the only person coming forward.

Mr. Dobson-Smith: No, I have another person who is with me.

The Vice-Chairman: When you are seated, perhaps you would identify yourself and your colleague.

Mr. Dobson-Smith: This is a person who has received psychiatric treatment, and she prefers to remain anonymous if that is all right.

The Vice-Chairman: Thank you very much. Please proceed.

CITIZENS COMMISSION ON HUMAN RIGHTS

Mr. Dobson-Smith: I do not know how many of you are familiar with the Citizens Commission on Human Rights, but we were established by the Church of Scientology. We are an international nonprofit organization dedicated to the elimination of physically damaging psychiatric practices and the restoration of human rights in the field of mental health. We have been investigating and exposing psychiatric violations of human rights since 1969.

Our commission has an international membership of laymen and professionals who have in common a respect for and dedication to secure and preserve the rights and dignity of the individual.

We have all heard and know that, for every psychiatrist who gives an opinion as to the mental condition of a person, there are 10 others who will each give a different diagnosis. Standards are vague and unscientific, and methods of treatment vary from one psychiatrist to the next.

This presents a problem which faces you, our legislators, because many people who are diagnosed as mentally ill were normal people who simply had problems and were then victimized by the psychiatrist. It could happen to you or me unless we have legislative safeguards built into the system to protect the public and ourselves from abuses which result, such as forced psychiatric treatment.

We have just heard in the last two presentations members of the medical profession, who always seem to lean towards the radical treatment requirements of a person who very much has had a psychotic break at some level that is quite severe. They fail to discuss the everyday, average person who walks in off the street because the stresses of life have become too great and who wants just to sit down and talk to somebody. I will deal with that one.

Legislation is not just for the insane or dangerous, however that is determined, but also exists to protect the normal person like you or me who, one day, may be overcome by the problems of life.

Bill 7 recognized that we, as Canadians, had certain rights as citizens even if we did find ourselves in a mental institution. One of these rights was to be able to refuse treatment and not have treatment forced upon us against our wishes.

A normal person who somehow finds himself in a mental institution and then is told he is mentally ill and needs to take treatment may become all the more agitated and refuse the treatment. That refusal is then looked upon as a symptom of his mental illness and he is further diagnosed as requiring

treatment, which is forced upon him against his will; abusive treatments which are harmful and damaging.

To give you a sampling of the kinds of diagnoses we are dealing with, in the psychiatric list of diagnoses for childhood disorders, in the last 10 years the list of psychiatric diagnoses has increased by approximately 1,000 per cent to the point where it is arriving on my doorstep in my son's report card because "he was looking out the window and not paying attention in class," which is now a psychiatric disorder, a learning disorder.

You have already heard submissions by other groups on the fact that psychiatric drugs are dangerous and cause psychotic symptoms. We have only to look in the Compendium of Pharmaceuticals and Specialties to see just what these effects are. The drugs cause physical damage, as does electroconvulsive therapy, which is shock treatment, and other such intrusive treatment.

The definition of criminal assault is "the intentional application of force without consent." The key issue here is consent, since there is no doubt that delivering an electric current or a potentially damaging drug to a person constitutes an application of force. In other words, the person would be rendered unconscious or unable to walk or be sitting in a chair or not able to remember anything for the next while.

In the case of a person who is mentally incompetent, it is of course impossible to obtain a valid consent from the person. A person sitting in a hospital is in a coercible position, he may feel intimidated, whatever. The law, in certain narrow circumstances, will recognize a substituted consent for an incompetent person as being valid. A parent or a guardian may give a valid substituted consent on behalf of the incompetent person, but only where the procedure in question is clearly beneficial.

This is a legal opinion we got on the issue of substitute consent. If the procedure involves risks of harm and is not absolutely essential to the person's life or health, it is doubtful whether a valid substituted consent can be given. In other words, risky medication and procedures carried out on an incompetent person constitute a criminal assault and a civil battery, regardless of any substituted consent.

It is the contention of many professionals that psychiatric practices are not beneficial to the person. At the very least, they involve risks of harm and are not essential to the person's life or health. As such, they are constitute a criminal assault and a civil battery.

We believe as well that statutes which cover the treatment of those incarcerated in psychiatric facilities and which purport to authorize harmful psychiatric treatment are unconstitutional, as they violate section 12 of the Charter of Rights and Freedoms, which guarantees that "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."

In the case of a competent person, the issue is just as complex. Since there is no standard level of information provided on a treatment--none of these people who were here before ever said what level of explanation was given to the patient who hung himself or to his family, or what level of information was provided to the person who needed the medication. One of them may have given him a certain level and another one may have given him another different level. There is no standard level, and this is what we are concerned about.

If there is no standard level of information provided on a treatment,

there can be no competence to understand the nature and consequences of giving or refusing consent to the treatment, because of the medical and technical nature of that treatment. This would render any competent person who is signing a consent form completely incompetent, because this doctor over here could say to this person, "This is what we usually do in a case where we have this kind of an illness, and this is the drug we are going to use," without any broadcast, without a complete and thorough medical examination to see that this guy's agitation, upset, etc. was not caused by a pinched nerve in his spine, etc. There are various things that could occur.

If this person is going to be given that medication, if he is going to be given a treatment, he should be provided with information about the treatment. They can give him all the positive and hoped-for effects of that treatment, of course, stating that there are not necessarily any guarantees that this will be the outcome, and all the negative or adverse effects of that treatment that could occur and have occurred; that are known by the medical profession. Otherwise, the person is being duped. He is not being fully informed. It is like signing a mortgage document without knowing the interest rate.

The following are the most common patient complaints we have come across. We have gone around Ontario. We have a petition here that has 4,200 signatures on it and is 150 feet long. We have been doing this for the last year because the issue of consent has always been a burning issue in our minds. Of people on the street who approach us and read our petition, 82 per cent of them have signed the petition. Many of those people who signed had family members who fall into the common patient complaint list I will now read to you, on which there are four common patient complaints.

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"1. 'They said I was a voluntary patient but if I tried to leave, they'd make me involuntary.'

2. 'If I didn't want the treatment and wouldn't sign the consent form, they'd make me involuntary and then give it to me anyway.'

3. 'The doctor never explained anything to me about the treatment. If I had known, I would never have signed.'

4. 'I never signed any consent form and they never told me anything.'"

As legislators, the most important prevention to harmful and destructive treatment is to inform those who are the recipients of this treatment. I am going to let this person speak to you.

Mrs. X: I am both the victim and the lucky survivor of an indescribably humiliating and degrading psychiatric interlude, an ordeal of violence and abuse upon my person.

I was a voluntary patient who became unwittingly subjected to an enforced program of unwanted drug treatment as a result of a consultation with a psychiatrist in private practice.

The Vice-Chairman: Excuse me. We normally have to have identification, and we are simply telling the transcriber there is no identification. It is just a technical question.

Mrs. X: I see. Thank you.

I was referred to the psychiatrist in approximately March 1985, by a neurologist, a specialist whom my general practitioner had referred me to for diagnosis of a condition from which I had suffered for many years. I believed this condition to be minimal brain dysfunction, otherwise described as hyperactivity or attention deficit disorder, and the neurologist, in fact, felt I suffered from this condition and prescribed treatment with the drug Ritalin. My GP had periodically prescribed me this drug through the years, and it was the only treatment which brought relief from the extreme pain and discomfort this condition causes me. The neurologist requested I consult with a psychiatrist for a confirming diagnosis, and the psychiatrist I visited duly and emphatically agreed I required treatment with Ritalin.

I considered this visit to the psychiatrist to be a mere formality, but at the time of this statement, June 1987, I am still collecting the scattered shards of my self-confidence and self-respect, both of which were utterly split asunder by the devastation that resulted from my ill-informed decision to become this man's private patient. He inconvenienced my life, to say the least.

He vehemently and capriciously proposed, then insisted, on an alternative diagnosis and an alternative drug treatment. This was to begin no later than the date he specified, which initially alarmed and confused me and progressively terrorized me. My protests to this suddenly all-powerful treating psychiatrist about the mandatory pharmaceutical sojourn into God-knew-what unknown he had ordered I embark upon, as well as the intense fear I felt at the hopeless position I knew he had betrayed me into, were simply dismissed. I have never experienced such deep pain in my life as I felt with his betrayal of my trust.

I agreed to use lithium and Parnate on a trial period, verbally agreed upon between us, and he also agreed he would immediately halt this treatment if I experienced any adverse side-effects. In fact, he refused to halt the treatment, even as I made a rapid metamorphosis from an intensely vital and energetic woman--my nervous condition notwithstanding--who has had regular and extensive contact with a wide public through radio and television shows across Canada and the United States, to an immobilized, disoriented, muted, terrorized recluse in her own apartment, unable to work, unable to function and finally unable to think.

If I had known all this in advance about the psychiatrist and his sudden, unexpected power to decree the status of my mental functioning and about his lithium and Parnate, about which he neither provided me information nor obtain my consent to use upon me, I would have appealed for protection from him at the outset of what was, for me, truly a journey into the jaws of hell. I would have sought this protection from the nearest police station or justice of the peace.

I would like to add that the unpredictability of the environment and my ability to control it during my experience on these drugs makes it clear to me how easy it would be to contemplate suicide while under their influence. However, I had no intention of such a measure.

I hope the pursuant end result of what I feel is the psychiatrist's insidious betrayal of me, from which I have somehow escaped permanent injury, will be that legislative safeguards will be established from these hearings to prevent similar horrifying abuses and suffering to individuals in the future.

Mr. Dobson-Smith: The issue of competence to consent has two

components. First, the person must be able to understand the subject matter in respect of which the consent is requested, and second, the person must be able to appreciate the consequences of giving or refusing that consent. Where the consent relates to a proposed treatment, the subject matter component of mental competence has two aspects. The first involves the nature of the person's illness and the second involves the nature of the proposed treatment.

It is unacceptable to have no information provided on a proposed treatment; any treatment: electroconvulsive therapy, psychosurgery or any medication and every medication or any other form of treatment. We feel every person or his substitute decision-maker must sign in the presence of the patient advocate the specific treatment form that lists all the hoped-for results, informs of no guarantees and also of all adverse effects experienced by that specific treatment procedure or medication known by the medical profession in lay terms so the person can understand what he is reading. If it says tardive dyskinesia, it means in English tardive dyskinesia, so the person can realize what he is reading.

The person cannot be expected to anticipate the outcome of any treatment or to be able to give consent to any treatment if he is not informed. As no standard level of information is provided, one psychiatrist may inform in detail where another may provide no information at all. Also, to fail to inform violates the charter, as it is an intrusion and constitutes an assault. Lack of a standard information form permits arbitrariness. One doctor may fully inform or partially inform or greatly inform and another may say nothing, as in this case.

In summary, we feel the following four conditions must be established by this committee as part of Bill 190:

That counsel is provided for a patient upon admission--if he wants to do something with that counsel, then fine--as soon as is reasonably possible. There is a specific thing here that we are concerned about on the issue of consent and of competence and incompetence.

We had a case contact us at 11 o'clock at night. A woman called our office. Her sister was being treated at Toronto East General and Orthopaedic Hospital. She said: "I did not sign any consent form and they are going to treat my sister and I do not want them to treat my sister because I know what is wrong with her. She is just upset about something, her boyfriend. She is 20 years old and I do not want anything done to her like shock treatment or any of this."

She called us and I said, "Is she mentally competent?" She said, "No." I said, "Did the nurse know that she was mentally incompetent?" She said, "Yes, I mean, she could see that." I phoned the nurse and said: "Her sister is here and she says she does not want to be treated. Is there anything on that? Can you have somebody get in touch with me?" She said, "We were going to treat her." I said, "No one signed a consent form." She said, "Yes, I understand that, but she signed it." I said, "But isn't this girl that is there mentally incompetent?" She said, "Yes, but we had her sign it any way." It is so easy.

If there is no certificate of an incompetency on file, it is assumed the person is competent. The issue of competence in a circumstance such as this is not necessarily brought into play. It can just be avoided.

The person has to be deemed to be competent to at least manage his affairs. We would like to have this verified with counsel there because I have

had patients--this is a number of years ago--who thought they were hockey players such as Frank Mahovlich, who were unaware of their circumstances and who were in a hospital for years and years. These patients were being asked to sign consent forms for shock treatments and in some cases did 60 times.

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We would like to see a person deemed competent or deemed incompetent. He is this or that. It is in his file. If he is competent, then he may sign and he may contact a counsel, etc. If he is incompetent, he does not sign anything, cannot do anything and has a substitute decision-maker appointed who is a family member, etc., and then that all takes place. As soon as reasonably possible, it is to be decided by the psychiatrist with counsel and the person present whether the person is competent or incompetent. Then a certificate of competency or incompetency is filed in the person's file.

The Vice-Chairman: If I can break in, we are getting short on time. Perhaps you could give us the rest of the points that you want to cover.

Mr. Dobson-Smith: I am almost finished. I will be one more minute.

If competent, the person is given an information form that provides him with all the positive and negative effects of the treatment, including medication, known by the medical profession. If incompetent, the substitute decision-maker is given the information form. The person or the decision-maker then decides whether he should consent or not. This is done with counsel present, if he wishes, and the information sheet must be in lay terms. The person must have the right to refuse consent if he is competent, and if incompetent, the substitute decision-maker must have this right after he has viewed this information. The only time they can actually make an enlightened decision is after they view the information.

If consent is refused, no treatment may be given, per Bill 7.

A specific outline of the form that amendments to Bill 190 would need to take for the inclusion of rights to informed consent has also been included. I have attached to the back of this sheet what has been in place in California for approximately 10 years now. It is called assembly Bill 1032 and it is the bill for full informed consent that deals with the issue of full written informed consent. It is attached to this. I do not need to read it. I am sure you can all read it.

That is it.

The Vice-Chairman: Thank you very much. Are there questions from the committee? I think the presentation has been pretty clear and your illustrations dramatic and clear, so that may explain why there are no questions. Thank you for coming.

Mr. Dobson-Smith: The simplicity of having information provided to somebody about a treatment, I think, is very reasonable. This whole roll of all these people agree to this because they would like to know; they just are not informed. They go there and they feel sort of intimidated--"My daughter is really bad, doctor. What do you think we should do?"--and they just sign whatever they are told to sign. There is no onus on anyone to provide anything for them.

Later they say, "Look what you did to her, my gosh." If they had known they would never have signed, but no one told them. It is very simple.

The Vice-Chairman: I think we have your point. Thank you very much.

Mr. Dobson-Smith: You are welcome.

Mrs. X: May I add one thing? My experience was absolutely tragic and I hope I conveyed that to you.

The Vice-Chairman: I think we have taken your message pretty much to heart. Thank you so much.

I believe the Criminal Lawyers' Association, Marlys Edwardh and Marcia Matsui, are coming forward.

Ms. Edwardh: Good afternoon. I understand you have had a very long day and we have promised ourselves that we will be no more than 10 minutes.

The Vice-Chairman: I might ask the committee whether we can have dispensation to continue until 6:15 p.m.?

Mr. Reville: Do not look at the clock.

Before you get into that, there was one point of order I wanted to make earlier and I did not get a chance. I just wanted the committee to have notice that I have 25 amendments that I will be moving to Bill 190. There are a number of government amendments as well, and I have the amendments now. However, I am not totally content with the drafting thereof, so probably you will get them on Monday.

The Vice-Chairman: Monday? Thank you, Mr. Reville.

Ms. Hart: Perhaps I can say that I regret I cannot stay. I am particularly interested in this brief but I do not want to stop the committee and I will undertake to look at Hansard.

The Vice-Chairman: Thank you very much for your indulgence in our scheduling and some of our delays in the course of the afternoon. Will you identify yourselves again, just so that our transcription service has the identification, and then proceed, please?

CRIMINAL LAWYERS' ASSOCIATION

Ms. Edwardh: My name is Marlys Edwardh. My colleague is Marcia Matsui. We are both members of the Criminal Lawyers' Association, which is a voluntary association of those who practise at the criminal bar and I think we number something like 400 members in Ontario.

We had initially planned to come here today taking some very strong objections to some aspects of Bill 190. What I now understand to be some of the proposed amendments arrived late this afternoon. One of the areas we are obviously very concerned with is the interface between the criminal justice system and the mental health system. I understand there is really no issue now, and please correct me if I am wrong. Section 35c of Bill 190 will not go forward as presently drafted and will include instead a provision that I do not have any way of making any specific reference to. Rather than equating a person who has been sent into a psychiatric facility pursuant to the code with someone who has been certified, that equation will not be made unless the person actually meets the criteria of civil certification.

Mr. Reville: That is correct.

Ms. Edwards: Let me begin by saying that this is a very important amendment from our perspective because I suppose that was the most important issue we wanted to address. The equation was singularly faulty given the multitude of circumstances that could bring a person into the criminal justice system prior to any findings of anything. With that understanding, let me deal with some of the other issues.

The first and foremost one--I suppose we join those voices the physicians have expressed so much concern about--is the premise of Bill 190 and its underlying assumption that the consent of a competent person to psychiatric treatment can be overridden. It is our view on behalf of the Criminal Lawyers' Association that the premises are indeed extremely faulty and the whole framework in fact is unconstitutional. It is, in substance, both a violation of section 7 of the Charter of Rights, that being the provision that protects the security of the person, and indeed a violation of section 15 of the charter, which is the equality provision, in so far as it discriminates on the basis of mental handicap.

I mention the point about section 15 because I think it is something you must have heard a thousand times in the last week. We have no capacity as a society with individuals who are terminally ill, who are extremely ill or with pregnant women who may be doing something with respect to a foetus and the medical profession would like to treat or stop the treatment. We do not permit the state to have an interest that is sufficient to intervene. That is not true with the mentally ill. There is a supposed interest that I find very hard to define that is different from all those other interests in those circumstances.

If I may take a small aside for a moment, I listened to the arguments from some of the doctors who were here at about five o'clock. Although they had a humane face, they are also arguments about economy and the need to keep people out of hospitals at \$400 a day. However, there is one thing we ask you to consider very carefully. Very rarely will economy justify a severe, intrusive procedure that violates someone's sense of integrity or being. With respect to constitutional law, I put to you that the courts of this country have already determined that economy at that level, in terms of cost, will never justify it.

I suppose our ultimate view is that the provision should go. In terms of the compulsory treatment of the competent person, Bill 190 is wrong and unprincipled and will be struck down as unconstitutional eventually. One of us will be out there doing it for you.

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I suppose the next step back is to look at some of the other difficulties with the procedures that are here. I know everyone is going to think this is taking lawyerese to its ultimate and logical absurdity but perhaps I will plead for us a little. If you look at the procedures set out in section 35, may I just pause to note that unlike most tribunals where there is a serious invasion or a serious authorization affecting someone's person, the doctors do not have any obligation to give their views or put them forward under oath. I just pause to note the marked acceptance that does not exist before any other tribunal.

Let me then move on to another substantial area that I understand has been amended. Clauses 35(2)(a) and (b) and 35(4)(a) and (b) now, I understand, contain proposed amendments calling for the least restrictive treatment and

also an assessment and balancing of the risk. It is our view that this proposed amendment is critical to save section 35. That is the least that must be done to bring it within any constitutional justification. If there is any justification to do it at all, it has to be on the least restrictive basis.

The other difficulty, I suppose, is that I and my colleagues come as criminal lawyers. We are accustomed to people being inside facilities that most of you probably have not had occasion to visit, places such as Penetanguishene. Over the years, there have perhaps been uses of more experimental treatments than are usually available, so it is our very strong position that there must be an express prohibition in this section saying that the treatment authorized will not be experimental. Even if you go through all the risk analysis, reading the section as I read it, it would not preclude experimental treatment. It would be my submission to you that it would not be proper to authorize this in a situation when there was an override to a competent refusal.

I also wish to bring to your attention what I consider to be too low a threshold test justifying the state's intervention. If you look at subsection 35a(4) of this proposed Bill 190, you will see that it speaks in terms of being likely to affect a substantial improvement. That notion of "likely" is one that lawyers are accustomed to using with some regularity. It does not mean any more than "more probable than not." You put out the balance and if it goes one bit over 51 per cent, you are in the ballpark. That is what it means. It is our view that when you are talking about something that could be a potential constitutional violation, the threshold test has to go higher.

Mr. Reville: Could you tell us how high it should go so Mr. Callahan can hear?

Ms. Edwardh: I can see I am coming in on an old debate. The traditional highest standard as a matter of law would be the criminal standard called "beyond a reasonable doubt." This is not that standard and there is no basis to say that any court would construe it on that, as being that high standard.

Mr. Callahan: Even with the use of the word "satisfied"?

Ms. Edwardh: "Satisfied" is a word that is used in a number of different circumstances. "Satisfied" only means this: that the tribunal itself must be satisfied. But that is a civil standard. We use it occasionally in the criminal law and it has been analysed in terms of preliminary inquiries. It has been analysed in use of search warrants. Both of those satisfy the use, search warrant law and also in preliminary inquiries. In neither case do they import "beyond a reasonable doubt."

If that is what you are trying to say, then say it. That is what I think the standard should be for this kind of intrusion. As it stands now, jurisprudentially no one would interpret it that way.

The next point is that it is my view that this defect in this low standard is not cured by the use of the terms "satisfied" or "substantially improved" because "substantially" is not defined in this statute. Absent a definition, I do not know whether "substantial" would mean that you would expect a person at least to cease to be certifiable. In other words, if the medicine that was going to be forceably given was medication that would not in fact alter the person's condition as a certified patient, and he was going to be in the hospital in any event, one wonders what the state's interest is in overriding that consent.

I cannot think of any interest. I am always saying, "They justify it." I come from the perspective of a criminal lawyer; that is, if we are going to have this kind of intrusive thing, there must be a justification for it. It would be my view that we should define "substantial" in some way as to indicate that we are calling for something that at least moves the person beyond the criteria of certifiability.

The other difficulty we have with Bill 190 is one that lawyers traditionally complain about. It is the nature of the hearing before the review board. Although I understand that section 33a of the Ontario Mental Health Act applies, when I read the provisions in toto, what I do not see is a right to produce the psychiatrist or a right to cross-examine the psychiatrist who has rendered his unsworn opinion. I do not see a right in the patient to call independent evidence.

Let us suppose, for instance, I wish to challenge a psychiatric view that this treatment--the risk assessment by the psychiatrist. I could call upon a leading pharmacologist and say, "Look, we've learned something different about this." There does not appear to be any contemplated notion that you may want to hear independent evidence. You may want to call the doctor and ask him some serious questions. Maybe he has not read a pharmaceutical text in 15 years. Surely the review board should know that.

Those standard natural justice kinds of considerations are not provided for: the right to counsel, the right to cross-examine, the right to introduce evidence and the right to ask for reasons. I think they ought to be. I think that, because we are dealing with what I consider to be a serious inroad on personal security, the statute will, in fact, probably be read as requiring that, but I think it would save everyone a lot of difficulty and a lot of expensive litigation if that were simply set out.

The Vice-Chairman: Could I ask you whether you would prefer to take the rest of your time in presentation or in opening up for questions? Is there a way you could summarize for us the main points you are going to make?

Ms. Edwardh: I have one more point I would like to make, if I could.

The Vice-Chairman: We are at the point where we have to make that decision, and then the committee will begin to disintegrate on us and that will be the end of it.

Ms. Edwardh: Certainly. I would like to make one brief point and let Ms. Matsui make a couple of brief points, because I think they are also important. If we sat for five minutes, we could answer one or two--

The Vice-Chairman: Until fifteen minutes after.

Ms. Edwardh: Fifteen after. We will try to be very quick. Let me just make one other point that concerns me.

This purported amendment is not sufficient--the one that deals with the people who are found in institutions because of the Criminal Code. It is not sufficient because it creates a hypothetical certification and there is no review. There is no review because, as I read this, you are not certified, so all the protections a certified person gets, this person does not get because he is in fact not certified.

Then you say, "What is the jurisdiction of the review board?"--where you

look at what the board is supposed to do and what it decides on. There is nothing--when it says it is to receive an opinion and the opinion is supposed to set out reasons; what the review board addresses does not include this preliminary finding that the person is a quasi-certifiable patient. My concern is, although you have tried to equate them, you have not equated them. I would call upon the province to take its jurisdiction in mental health seriously. Create a dual status.

You have heard today or you have heard in the last few days that this is federal stuff. Do not for a minute back away from the fact that it is this province's jurisdiction to treat people. I would be hard-pressed to look seriously at the constitutional claim that says the mere fact that someone is in a facility because of some provision of the Criminal Code when he meets the provincial requirements means the province should throw up its hands and go home.

I say that with this caveat, that our Supreme Court will take this issue and decide it in the cases before it that will be argued some time this year, the question of the jurisdiction.

The Vice-Chairman: Thank you. I regret that there is time for only a couple of quick points before we get into a couple of questions, but do proceed.

Ms. Matsui: What I will do is just raise a couple of points and not expound on them at any length, simply because the points I would like to raise, in addition to the more central ones Ms. Edwards has spoken of, are particular generalized concerns about areas that are not scrutinized in the legislation but that are lingering concerns for the Criminal Lawyers' Association and those of us who practise defence law.

Particularly, I would like to invite this committee to look more broadly at the patient's access to his or her records, at other persons' access to his or her records and at the fact that there is indeed a gap in section 29. Although it speaks of subpoenas, court orders and various other things, as far as criminal lawyers are concerned, it is extremely interesting to us and of concern to us that section 29 does not deal with search warrants. This is a very large area in criminal law, and there is no procedure laid out here. I could go over the section at length, but I just want to raise that as a very big gap that ought to be looked at.

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Our suggestion would be that if a search were to be executed, the clinical records of a patient, a former patient or a former outpatient should be sealed and delivered to a justice of the peace for the purpose of a judicial determination as to whether this information is privileged. Such a procedure should exist somewhere in this legislation, and it is not there.

On our position with respect to the patient's access to his or her records, I would just like to add that it is a very good thing that the current legislation does address the ability of the patient to have that access and the ability of counsel to have that access and to disclose to the patient, but it is our position that it does not go quite far enough. We would suggest that a patient ought to have a specific and absolute right to his or her clinical record, absent some conditions which go beyond the harm provisions that are addressed in the legislation.

Generally speaking, we would suggest to you to consider that in other areas, if the person does not have access to the information, perhaps the adjudicative board should not have the ability to rely upon this withheld information.

We have concern also with section 33d, which appears to be fairly loosely addressed.

The Vice-Chairman: Just one, because we are getting close to our limit.

Ms. Matsui: That is fine. It is only a concern that other people have asked us--

The Vice-Chairman: Is this also in a brief that you have for us?

Ms. Matsui: I am afraid not.

The Vice-Chairman: Perhaps you can communicate that to us in another form. We will certainly pay very careful attention to that.

Ms. Edwardh: We will do so.

The Vice-Chairman: Mr. Callahan, you are first on the list.

Mr. Callahan: I spent 20 years practising criminal law. I was also a member of your association. I hope I have not lost my perspective, but when I listen, I have to pose--this is not hypothetical. This is an actual situation that seems to apply to schizophrenics.

A schizophrenic falls off the medicine, winds up committing a criminal offence and winds up being in custody. A bail hearing is held. The judge orders that he can be released, but only if he takes his medicine. That is a prescription for being rearrested on a breach of the bail and coming back before the courts. He becomes a revolving rubber ball and he could wind up with charges of breach of bail or being detained constantly. In that instance, the judge is really addressing the issue of bail on the basis that the person, in order to be allowed out in society, has to take his medicine so that he will become better.

What I find interesting from your statements, and also from my brother and from the Canadian Bar Association, is that it is approached, as happens in our profession, on the basis of looking at the law itself, per se, without looking also at the difficulties that arise in the real world. I say that respectfully, because I was in the same boat and I suppose I approached it that way.

If you look at the question of schizophrenics, they present, certainly in terms of a mental disability, a very significant problem, because the people who really suffer as a result of seeing that happen are the parents. The parents have no way of dealing with that problem if there is no type of review to require treatment. As they fall off their medicine, schizophrenics may very well appear to be as competent as you and I. In fact, in some respects, they have an ability to mask their incompetency.

Ms. Edwardh: May I just make two comments to that? It is important that you realize that even though you may be right that, factually, if you could compel treatment, you might eliminate a lot of problems with this

person, if we are talking about this particular statute. Leaving aside the criminal justice system for a moment, you are never going to deal totally with this person, because he is going to go in and out. He is going to get better and he is going to be released from a psychiatric facility, and then you will not have your involuntary patient whom you can compel to treat in the way I think you are talking about. You are going to put him out in the community where he fails as a result of his illness.

More problematic, and what I have asked for dozens of times in court, are, in effect, treatment orders under the Criminal Code as a form of probation. I have dealt with manic-depressive people who are on lithium and do very well. One of the problems is that if they start to go off or their blood levels change, they tend to have more difficulty and they tend to get into serious criminal difficulties.

Mr. Callahan: How is that different from what is being proposed under Bill 190?

Ms. Edwardh: As a lawyer, I would never ask for compulsory treatment without my client's permission. I am talking about the criminal bar. I would never invite a judge to impose it as term of probation or as a bail condition. There is a division in the bar that you have to recognize. There are judges who sit in the city of Toronto who say, "We will not compel treatment through either a bail order or a probation order." They will not. They refuse to. It is inappropriate. There are other judges who will.

This is a debate that goes on in terms of whether there should be a treatment order or a hospital order provision for treatment in the Criminal Code too. As a lawyer I respond to that problem by saying, "It is not uniform." There is a division in the bar as to whether it is proper. As a lawyer you ask for it only when you believe your client has given you permission to ask for it. In other words, you are inviting the court to set it as a condition. That is different.

Mr. Sharpe: I just have one quick question. On Tuesday, Mr. Justice Krever addressed a group at Queen Street Mental Health Centre on this issue. As a justice of the High Court he, of course, did not take a position, but he raised the question of the compulsory treatment of competent people against their will and drew the analogy of public health legislation that permits the committal and forced treatment of a person suffering from a virulent disease where that person has refused such treatment and could represent a danger to others by spreading it. He suggested that might be justifiable as a restraint on the rights of an individual as perhaps a section 1 defence under the charter.

Do you see any difference in that example from the compulsory treatment of an involuntary psychiatric patient who, because of his psychosis, is a danger to other people and therefore confined on that account?

Ms. Edwardh: Yes, I do, totally, because in fact what you say when you have someone who has a virulent disease that is going to be transmitted throughout the community is that there is a social harm in the risk of transmittal that you remove by putting him away and treating him. You could say to me, "We could just put him away." I do not know. I would want to hear some scientific evidence from an epidemiologist who is going to say, "That would in fact remove the threat."

If you had to treat that person to remove the threat, then I think that

has to be a much more permissible kind of situation because disease spreads through the most casual kinds of contact. If you say to someone who is inside: "Gee, whiz. You are going to be inside unless you take this treatment. There is really nothing we can do about it," what is the social harm component, even though you say he is certifiable and he may be a risk to himself or others? The social harm component is much smaller. When you talk about the spread of some serious disease, the social harm component seems to be much greater. I guess that is my initial gut response to it.

Mr. Sharpe: I suppose that--

The Vice-Chairman: I think you have probably had your exchange. We know your positions, and I am not sure much is going to change in the next two minutes.

Mr. Reville: I just want to get clear what you want done in section 35c. This is probably in the case of a Lieutenant Governor's warrant or somebody on remand. You say the government amendment really does not do the job.

Ms. Edwardh: Right.

Mr. Reville: Would you want a person to actually be committed under the Mental Health Act?

Ms. Edwardh: Yes. That is the only way to give the person the protections.

Mr. Reville: Notwithstanding that the justice system may have committed a person to an institution through its process, you want the mental health system to do it as well.

Ms. Edwardh: That is correct. All you have to do is to deal with the criterion that exists in the ordinary certification process, which say "would not otherwise be an informal patient," and you can do that by simple statutory redefinition.

Mr. Reville: A person can in fact dispute that if he wishes.

Ms. Edwardh: Absolutely.

Then, of course, you see, by being able to dispute it--and if you were successful in disputing it, you would then take away the right of the review board to deal with you because the condition precedent would be gone. You certainly should have that right to review it and dispute it.

Mr. Reville: For Mr. Callahan's edification, what would you, as a lawyer, say to a physician who came to your office and said, "I want to treat this guy," relying on a judge's order?

Ms. Edwardh: You want to--

Mr. Reville: I am a doctor and I have a patient. An order has been issued with respect to this patient that as a bail condition of his probation order, this guy has to take medication. Would you advise the physician that he might be on shaky ground?

Ms. Edwardh: You bet I would, and if I acted for the client, the

first thing I would do would be to go back to court and ask to be relieved of that condition and say to the judge, "He no longer consents to that treatment." You know what? It has never been done before, but I am sure most judges would not force that kind of thing. They are not going to exercise that jurisdiction. I cannot conceive of a doctor acting on that order.

Mr. Callahan: Just to reply to that, they have, in fact, enforced bail--

The Vice-Chairman: Is that a reply to Mr. Reville or a reply to Ms. Edwardh?

Mr. Reville: Why did he not reply to me during debate?

Mr. Callahan: Well, Mr. Reville asks a question and gets an answer, and I just want to ask--

The Vice-Chairman: I think I will have to rule that out because we are over time. I asked people to stay only until 6:15 p.m.

Ms. Edwardh: Thank you very much, gentlemen.

The Vice-Chairman: Thank you very much for presenting. Would you send that further information to us in a written form, please?

This committee stands adjourned now until after orders of the day on Monday. We will see you all then.

The committee adjourned at 6:21 p.m.

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S-7

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

MENTAL HEALTH AMENDMENT ACT

MONDAY, JUNE 8, 1987



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

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Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitution:

Reville, D. (Riverdale NDP) for Mr. Grande

Clerk: Carrozza, F.

Witnesses:

From the Psychiatric Patient Advocate Office:

Valentine, M. B., Provincial Co-ordinator

Giuffrida, D., Legal Counsel

From the Ontario Hospital Association:

Shushelski, C., Director of Legislation Services

Short, H., Director of Public Affairs

From Parkdale Community Legal Services Inc.:

Green, G., Clinic Director

Campbell, S., Community Legal Worker

Draper, D., Legal Counsel

From the Ministry of Health:

Sharpe, G., Counsel, Legal Services Branch

Individual Presentation:

Parsons, K. N., Board Member, Waterloo Regional Homes for Mental Health Inc.;

Board Member, House of Friendship

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, June 8, 1987

The committee met at 4 p.m. in room 151.

MENTAL HEALTH AMENDMENT ACT
(continued)

Consideration of Bill 190, An Act to amend the Mental Health Act.

The Vice-Chairman: I call the committee to order. I believe we have a presentation from the psychiatric patient advocate program. Would the representatives please come forward?

Mr. Reville: While they are assembling themselves, Mr. Chairman, I wonder if I could ask that the clerk distribute copies of my amendments to those members of the committee who are interested.

The Vice-Chairman: The clerk will do so.

Will our two presenters please identify yourselves for the Hansard service and then make your presentation in whatever form you feel is best suited to your purposes. Thank you for coming.

PSYCHIATRIC PATIENT ADVOCATE OFFICE

Ms. Valentine: Thank you, Mr. Chairman. My name is Mary Beth Valentine. I am the co-ordinator of the provincial Psychiatric Patient Advocate Office. On my right is David Giuffrida, legal counsel to the program. We will be sharing the presentation and responding to your questions later.

I would like to start by letting you know that there is a written submission that is being brought over for the benefit of committee members who cannot be here, or cannot be here for the full session. It will be provided to you, I hope, before the afternoon is over.

I will be summarizing that in my verbal comments, so if there are areas that anyone is looking at a little more closely, there may a bit more detail in the submission.

Just to give you a very quick overview, the Psychiatric Patient Advocate Office has been developed out of three highly publicized deaths in 1980 and 1982, and the subsequent coroner's inquests. At the time, consumers, volunteer organizations and rights groups, etc., mobilized and the result was the Psychiatric Patient Advocate Office.

It was developed by the Ministry of Health, which was under Mr. Grossman at that point, and has been formed as a quasi-independent program of the Ministry of Health. The recording structure is that the co-ordinator of the program reports directly to the Minister of Health and that helps maintain independence and allows more freedom to speak freely regarding the mental health system.

Basically, there are 12 advocates and 10 rights advisers placed in the psychiatric hospitals and the mandate of the advocates is to undertake instructive case work, do systemic advocacy and a limited amount of noninstructive advocacy, as well as public speaking, in order to raise awareness about psychiatric patients' rights and to address the concerns that patients have in hopes of negotiating agreements so that patients' concerns can be addressed.

In the first four years of operation, we have served directly about 12,000 inpatients, so we are speaking from experience in our presentation to you today. As well, we will review the literature and look at the experience in jurisdictions in the United States which have had the right to refuse for some time.

In Ontario's psychiatric settings, there are approximately 52,000 admissions annually to some form of psychiatric facility. About 12,000 of those people are admitted to Ontario's psychiatric hospitals run by the ministry, about 35,000 to general hospital psychiatric units and about 5,000 to private hospital facilities.

With the exception of a program in Windsor, a psychiatric ombudsman program that provides some advocacy to inpatients, the program that we operate is basically the only advocacy service available to inpatients or outpatients, and our mandate is basically for inpatients.

We would like to address today some of the very important strengths that we see in Bill 190, and then address our major concern about the bill. David will first address the strengths of Bill 190 and the proposed amendments.

Mr. Giuffrida: Thank you. A review of Bill 190 as it was initially tabled shows that there are many strengths in it that could improve Ontario's Mental Health Act in significant ways, particularly in ways that have been recommended in the past by groups such as the Clark committee reporting on electroconvulsive therapy and the uniform law commissioners in their draft uniform Mental Health Act, which has been drafted in consultation with representatives from provinces and the federal government across Canada.

Perhaps the single most important addition to the law that Bill 190 would provide would be an improved mechanism whereby a person could select a substitute decision-maker in the event of subsequent incapacity.

Ontario's Mental Health Act has established a mechanism setting out a list of nearest relatives, which has served in the past but is broadly recognized as inadequate, because one cannot always presume that the person who enjoys the closest blood or marriage relationship to the patient is the person who is most knowledgeable about the patient's condition or cares most about the patient. Often, the person who pops up as the top one on the list and the one whom the attending physician is required by law to speak to may be separated by an ocean from the patient and not able to be of much assistance.

It is broadly recognized that giving a person the ability, while competent, to designate someone who could act on his behalf in the event of subsequent incompetence would be a major step forward in this legislation. I would add, too--anyone is entitled to speculate in this area--my presumption would be that more often than not, patients would pick as substitutes the people you and I would intuitively select as the appropriate person to be a substitute. It may often be a family member. In the Mental Health Act, one level of family members is siblings, brother and sisters, but it does not tell

us which of the siblings would be the appropriate one. This would allow the patient, while competent, to name which of the siblings he or she would like to be his or her substitute in the event of incompetence. So we believe that is an important addition in Bill 190.

In addition, the bill would establish guidelines for the guidance of a substitute decision-maker and guidelines for the guidance of the review boards in making treatment orders. For the substitute decision-maker, it would establish that they must act on the wishes of the patient, expressed when competent, if these are known; or if not known, he must make a best-interest decision, having regard to the kind of treatment which would most likely lead to the recovery of the patient.

There has been a lot of uncertainty in the law relating to the treatment of patients under warrants of the Lieutenant Governor and patients who are voluntary in a psychiatric facility but incompetent to make treatment decisions. Bill 190 promises to bring certainty to this area of law, which would benefit all concerned.

Finally, the bill would prohibit treatment orders for electroconvulsive therapy which is, given its controversial nature, an appropriate designation for the special category of treatment. It would still be fully available to a patient who wanted it.

In recent weeks, reviews of Bill 190 have indicated areas where improvement could be made through rewording and amendments. We have had an opportunity to review the government amendments, which I believe have been tabled, and are in support of many of them. Some of them are fairly technical in nature and I will not refer to them in detail, but an amendment to clarify that treatment is not to be forced on former patients and outpatients--I believe it was never the intention of the government that it be so--is welcome.

The amendment adding two additional criteria for the guidance of substitute decision-makers and for the guidance of review boards considering treatment orders are drawn from the uniform Mental Health Act, in addition to the existing criteria, that the treatment should be one that will result in the patient's getting better and will not be imposed if the patient will not likely get better, or may likely get better without it. In addition, there are two criteria which say the treatment must be the least invasive and intrusive and that the benefits of the treatment must outweigh the risks. I think these are criteria which intuitively we would all accept and it is an important addition to the act that these are included.

Because Bill 190 extends the scheme of substitute decision-making to voluntary patients, whereas it had previously been available only to involuntary patients, it is important to extend to voluntary patients the right to a board review if they have found treatment incompetent. That has now been included in the government amendments.

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In addition, clarifying the availability of treatment orders to warrant patients is important. Before warrant patients are to be dealt with as if they were involuntary patients and made subject to treatment orders, it must be established that they meet the committal criteria, as involuntary patients would. I think that is an important clarification.

As you might expect, we considered that there were still areas where we

would like to see amendments and would support amendments. This is in addition to the key issue that is being faced by the committee of whether the decision of a competent involuntary patient ought always to be respected. On that view, Ms. Valentine will advance our position further, but in other respects, there are amendments which our program would support.

For example, age 16 now exists as a hard line, an age cutoff, as the age of competent consent. Under age 16, no matter how emancipated or precocious the patient may be, under the Mental Health Act as it is currently worded, he is unable to give consent. We would support an amendment which would establish age 16 as the *prima facie* age at which a person becomes competent but would leave it open in appropriate cases for a doctor, a board or a court to decide that someone under 16 is in a position to make treatment decisions.

Under the Mental Health Act as it now exists, there is no authority to force psychosurgery--for example, lobotomies--on any patient who does not wish it. Because of changes made in Bill 190, I suspect inadvertently, it might arise that a voluntary patient could be the subject of forced psychosurgery. We would support an amendment just to clarify that could not be the case.

In common law, the consent of a patient must be informed and voluntary, but it is important sometimes to codify accepted common law principles in a statute for the guidance of health care providers and others. We would support an amendment that establishes that consent must be informed and voluntary.

The debate has focused thus far largely on rights as opposed to entitlements: rights to resist the intervention of health care providers as opposed to entitlements to institutional and community health care. We would support an amendment that would clarify that an important aspect of the total provision of mental health care is the provision of community services and an amendment which would set out the range of such services in detail.

We feel the standard of proof in a review board hearing where the liberty of the subject or the integrity of his person is at stake if he is the subject of a treatment order should be proof beyond a reasonable doubt, the criminal standard rather than the civil standard of proof on the balance of probabilities. The Mental Health Act is silent on the standard of proof now, but the boards and courts seem to have hit upon something like the civil standard. We would support an amendment that would introduce the criminal standard when these serious issues are at stake.

Finally, our experience with amendments to Bill 7 since December 18 has disclosed some sections of the act, having to do with procedure when a patient is awaiting a review board hearing or an appeal, which require further fine-tuning. We would welcome amendments which would make these sections function more clearly and efficiently for all the parties concerned.

Ms. Valentine: Of course, the central issue of Bill 190 is the right of a competent person to give or withhold consent to treatment. In this regard, the Psychiatric Patient Advocate Office is emphatically opposed to that section of Bill 190. We think it is important that the other positive issues are held, but we just cannot support this particular section at all.

Consent needs to be informed, voluntary and competent in order to be valid. The basic principle of informed consent flourishes elsewhere in medicine and, actually, with some psychiatrists. Patients are informed of the risks and benefits of the proposed treatment, of alternative treatments and of having no treatment at all. After having his or her questions answered and

concerns addressed, the patient then has the right to give or refuse consent to a specific course of treatment.

It has been only since 1978 that psychiatrists have had a power that no other physician has; that is, the right to be able to force treatment. For instance, the internist with a diabetic patient cannot force a diabetic to take his insulin or make him remain on his diet to prevent insulin shock or a diabetic coma. A physician cannot force an alcoholic into treatment to prevent his liver from developing cirrhosis and dying or to preserve the family, which is going through a very difficult period of time.

Such patients, we would propose, are certainly a concern to their family members. The treatments are less intrusive than psychiatric treatment. There are fewer potential side-effects from forcing treatment in those types of situations and potentially greater benefit could be received. Where is the justification you could provide for allowing forced treatment in one situation and not in the other? "Best interest" to force treatment on competent persons is available only to psychiatrists and to no other doctors.

Under Ontario's present Mental Health Act, the physician has several references to treatment, several ways of detaining and applying for the ability to treat. I will not go into these now; they are summarized in our written submission, if anyone cares to go back and have a look at them.

Basically, the issue of bypassing informed consent principles exacerbates the sense of powerlessness, the loss of self-esteem, the personal loss of dignity that can be tremendously overwhelming for a patient in a psychiatric setting. It is important to realize that forced treatment has not been proven effective. There is some evidence that suggests that significant adverse effects do occur from such an approach, and that patients' initial reaction to their medication is strongly indicative of their actual outcome.

Competent persons refusing all medication for an extended period of time are exceedingly few. People usually want to be able to talk to their physician, to have their physician listen to them, about the side-effects, complaints, the issues that they have. The side-effects from psychotropic medications can be extremely debilitating.

The remainder of our presentation will focus mainly on the clinical issues in relation to forced treatment. We know that quite a few other groups have addressed the legal issues with you and we would like to focus back on some of the clinical issues.

In order to reasonably undertake a discussion of the right to refuse psychotropic medication, there are some basic assumptions that we need to run through and clarify first.

At present, the diagnosis of thought disorders or mental illness is a very subjective evaluation of the patient's conversation and behaviour. Although there have been claims for more than 100 years that psychiatry is on the verge of proving that major mental illness is organic, there is not yet sufficient scientific basis for that belief. Psychiatry is therefore not a precise science.

A patient who is repeatedly admitted to a psychiatric institution--and many of them are repeatedly admitted; almost 50 per cent--may have a differing or altering diagnosis on every admission, or a differing or altering diagnosis depending upon which physician he sees. Mental disorder then cannot be diagnosed with a great deal of accuracy.

Psychopharmacology has undergone significant changes since the late 1950s when chlorpromazine first began to be used for controlling psychotic symptoms. The antipsychotic agents help to control symptoms such as hallucinations and delusions, but they are not a cure.

Debate ranges from people who believe that psychopharmacology is a very specialized discipline that requires a great deal of training and skill in order to prescribe appropriately, to those who, with very little general practice training, feel that they are prescribing successfully.

Phenothiazines, psychotropic medications, have many side-effects, some, as I mentioned, potentially permanently debilitating. Tardive dyskinesia (TD), the term you have heard from other groups, was first noted in the literature over 25 years ago, and it is not until more recently that people have been paying serious concern to it.

Queen Street Mental Health Centre has recently opened a tardive dyskinesia clinic, which has a half-time physician working in it, to address the concerns of patients and attempt to manage those with TD symptoms. In the first four months, 50 patients have received active attempts at management. The clinic is also conducting education seminars for doctors about tardive dyskinesia.

Ex-patients you may have frequently seen on the street often get identified as mental health patients because of their shuffling gait, perhaps unusual mouth movements, sometimes a protruding tongue sometimes a rolling motion of their hands. It is important that you recognize those are not symptoms of mental illness. Those are side effects of the medication that are creating that effect.

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Weight gain, blurred vision and impotence are all very common side effects. There is a general feeling that people have that is usually described by the word "awful" or "feeling miserable" that many, many people have from psychotropic medications. Rare but possible side effects include seizures and death.

Although the odds basically favour the clinician who predicts that schizophrenia will improve if the person is treated with antipsychotic medication, it must be noted--and I quote from one of the better, more controlled studies that has been done:

"A sizeable proportion of schizophrenics improve when receiving placebo alone. Furthermore, some schizophrenics do worse on anti-psychotic drug regimens." Other studies show improvement from acute episodes without pharmacology but with psycho-social support.

The combining of drugs, polypharmacy, basically complicates treatment and psychopharmacologists usually recommend that the fewer drugs used, the better. Yet there are many patients who are receiving 11, 12, 13 different medications. There are patients who have drugs switched easily as they come in and out of hospital or as they get switched from ward to ward and have different physicians treating them. So there are problems with the prescribing of medication.

It is also important to recognize it is not simply the daily dose of a medication that is important but the concentration of the medication that is

in the person's blood stream. Toxic effects from medications can occur actually even within the normal therapeutic range. But perhaps more important is the issue that overmedication is very easy. Basically, a patient can be unresponsive; because they are not responding, the physician prescribes more of the drug.

Drug therapy can actually exacerbate the symptoms of the mental illness and cause side effects--agitation and so on--that can be taken as the symptoms and, again, the dosage is increased.

Total daily dosage when there are several drugs combined can exceed daily dosages. Frequency of injections can cause accumulation. A drug has a certain amount of life that carries on for a period of time and, depending on the frequency of injections, accumulation can occur.

Perhaps one of the most difficult situations to ascertain is when a person is already on daily medications and then when in hospital receives what are known as "stat drugs" or "PRN drugs," basically immediate drugs for restraint. PRN drugs are used when people become extremely agitated and they are given a special dose of the drug, and that is on top of the normal daily dosage they are receiving.

It is important to realize there is no evidence that treatment refusers are or will become more dangerous to themselves or others.

We know there is much concern with families. Before coming to the psychiatric patient advocacy, I worked in community mental health for the last 10 years and I am very aware of working with the families and the concerns that do exist. The families have some very legitimate concerns. They report things such as the lack of ongoing support, lack of information, lack of education, difficulty in getting information about diagnoses, little information about the types of medications, the side effects and concern about what will happen to their adult child if something happens to them. They become concerned about how to handle outbursts. They do not know what to do. They find the legal system sometimes seems to thwart their efforts. They are concerned about whether or not they should provide substituted consent. There are many issues of that sort.

But we firmly believe that Bill 190 does not address those concerns. Those are very legitimate concerns and they need to be addressed, but they are going to be addressed only by community supports and access to medical treatment when it is needed. Force treating someone for a short period while they are in hospital, we submit, will not solve the concerns families have.

I would like to comment just for a second on the electroconvulsive therapy exclusion and the comment that I believe the minister made the first day of the committee, that there was the possibility of reopening discussion about ECT. Also, I have heard physicians make the comment that ECT should not be included, their perspective being, of course, that ECT should be moved back in and they should be allowed to force treat with ECT.

As a member of the Clarke commission, I would like you to be aware that there was a great deal of discussion around this issue. The consensus of that committee, with a wide variety of perspectives, including two psychiatrists, was that there should be no forced treatment of ECT or any other psychotropic treatment.

Where the commission was basically addressing ECT, it became impossible

not to extrapolate beyond that after looking in depth at issues such as consent and competency. Basically, the Psychiatric Patient Advocate Office supports the Clarke recommendation that ECT should not be singled out. The absolute right of refusal or consent must be extended to competent persons, regardless of treatment proposed.

I would like to refer to some of the empirical research that has been done, mainly in the United States. Litigation in the mid-1970s regarding the right of civilly committed psychiatric patients to refuse antipsychotic medication led to the establishment of a plethora of procedural and substantive frameworks. Unfortunately, there really have not been good, systemic or methodological investigations of those various approaches. However, there has been a recent review by Drs. Paul Appelbaum and Steven Hoge, who are well respected in the literature. They have a 1986 review that helps place in perspective many of the issues that have been raised to committee members during proceedings to date.

First of all, in relation to the frequency of refusal, psychiatrists have expressed fear that the right to refuse antipsychotic medication would lead to an epidemic of refusals and that not only refusers would be compromised but that as refusers became more psychotic and disruptive, they would turn hospital wards into nightmares where the safety of staff and patients was endangered and meaningful treatment was impossible.

Studies of frequency of refusal, however, have shown widely disparate numbers, apparently more related to the methodology used than to any real differences between the patients. Studies lumping all refusers quote from 22 to 48 per cent of patients refusing at some point. Some of these were hypothetical questions. Patients were posed the question, "If you were able to refuse and if you were asked, would you refuse?"

However, where data has been gathered through more formal procedures from patients who have persistently refused for 24 hours or more, there is a much lower incidence of refusal, between one and five per cent. It is concluded from the current state of knowledge that short-term refusal is frequent, but long-term refusals are rare. The feared epidemics of treatment refusal have not materialized.

Rather than continuing with the literature, because of the time, I would like to remind you that there are some specific studies referred to in my written submission. In particular, perhaps you would look at "Reasons for Refusal" and the number of side effects that are identified in a specific study where, as data was accumulated, there was a strong association revealed between drug reluctance and a variety of symptoms, basically described as being "more difficult to endure than any of the symptoms for which [the patient] was originally treated." There is a variety of studies relating to reasons for refusal, and long-term, follow-up studies.

Also included in our package is a case history, more or less, of a gentleman by the name of Lionel Aldridge, who some of you may recognize, if you happen to be football fans, as a former Green Bay Packers star who went on to become an ABC reporter. He is schizophrenic and has described how the symptoms of the disease and the side effects of the medication were an extreme downfall for him. He basically had his life ruined, as many schizophrenics do. But, through our finally coming to find a psychiatrist who worked with him to be able to titrate the medication to a dosage where he was able to keep his

symptoms under control but not have extreme side-effects, he has been able to go back to work and has become very productive.

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Basically, we have chosen that story rather than taking specific case examples of patients in Ontario where there could be the possibility of confidentiality being used.

What I would actually like to do for the remaining time is focus on some of the actual experience in areas that have had competent refusal. At Nappa State Hospital, a study was done a year after the right to refusal was in place and it was shown that the average dose of medication used did not change nor were there any other changes in the number of people who successfully refused medication, the number of hours of restraint, the average length of stay, or in the basic overall improvement in the pathology.

Perhaps most notable is the state of Massachusetts, where basically the equal protection standard, even for incompetent patients, is seen as neither radical nor remote but is being used on a regular basis. There was quite an outcry from the psychiatric profession at the time the process began to be implemented but implementation did proceed. As a result there have been medication reviews conducted by the state Department of Mental Health in Massachusetts with a priority on those cases involving medication refusal. As a result, and this is from the department's report, a significant number of persons have had their psychotropic medication reduced or terminated, with follow-up observation demonstrating some clinical improvement, marked decrease in side-effects and no noticeable deterioration in behaviour or functioning.

Data from all mental health facilities indicate no increase in accidents or injuries to staff or other patients. Actual use of restraints has decreased. Costs of hospitalization have not risen. There has been no increase in either the total census or in length of stay. There is no evidence to date that those who actively refuse treatment are any more disoriented or disturbed than those who passively accept medication, commonly known as acquiescing incompetents.

There has been no mass exodus of mental health professionals, as has been projected in some of Ontario's psychiatric hospitals, and certainly was projected in the United States. Basically, the Department of Mental Health has published a statement saying the experience in Massachusetts contradicts many of the studies cited in the review of earlier, uncontrolled studies and, according to the department, "demonstrates the exaggerated nature of the prophecies of doom offered by many in the psychiatric community."

From our own Psychiatric Patient Advocate Office data: we gathered information over a recent 10-month period. There was a total of 63 treatment applications made from June 1, 1986 to April 10 of this year, which extrapolates to about 76 applications being projected on an annual basis. Of those, 16 were for competent refusing patients.

In addition to the number of applications, there were several other observations around the review boards that are significant. Applications for treatment orders were for substantially longer than the six to 10 weeks generally estimated as the time it takes to settle an acutely psychotic patient. Most applications were for a minimum of three months, many for six months, and they were generally approved by review boards.

At some hospitals where persons affected were mainly Asians, questions must be asked about the ability of physicians to communicate effectively with people in a different language and to further be able to provide diagnosis which truly incorporates an understanding of the person's culture and psychology.

At some hospitals, physicians appeared to avoid seeking substitute consent or at least went to review boards without going to the family first to seek substituted consent. In some cases, but not in all, the board declined jurisdiction; in other cases, it proceeded with providing treatment orders.

Ninety-eight per cent of all treatment applications were in respect of medication and only two per cent with electroconvulsive therapy. Twenty-five per cent of all treatment orders were for competent patients; 54 per cent were for incompetent patients. For 21 per cent of the treatment orders, it was not stated whether the person was incompetent or not.

There were several applications that were withdrawn by physicians and several more that were not upheld. We feel this substantiates the importance of the competent person further having the right to review.

In follow-up cases, again, it is probably important to recognize that not all forced treatment ends successfully. One patient clearly deteriorated under the forced-treatment regime, was transferred to another ward where different treatment was consented to and the patient has now been discharged.

One patient went absent without leave and suicided while being force-treated.

Mr. Chairman, I am looking to you for the time. I have more information but if my time is up I would like to make a completing statement.

Mr. Chairman: I think it is probably wise to do that in terms of the other groups that are appearing afterwards.

Ms. Valentine: In our written submission there is reference to alternative treatments. Particularly, I think it could be worth your time to note an intensive observation treatment unit that is being established in some psychiatric hospitals including one of our local psychiatric hospitals where 15 per cent of the patients have not been receiving medication and have been receiving alternative treatments with an initial, tremendously successful outcome in reducing all sorts of hospital injuries, transfers to more secure units, etc.

Another issue we have not touched on that is in the submission is the issue of the psychodynamics, basically the relationship between the physician and the patient and the importance of the role the physician has in that particular situation.

The right to refuse treatment, of course, relies heavily on the competency determination. It is important to remember that the issues do not relate just to competence to refuse but also the issue of competence to accept should be addressed. That there are many people who are probably incompetent, but until the refusal occurs no competency determination is made.

We have heard of the possibility of the minister establishing a committee or a commission to look at competency determination and we would

strongly support that perspective. We would see it as being a broad-based committee so that a variety of opinions were presented.

With the exception of the competent override that we have spent most of the time about, we see Bill 190 as being extremely positive and having some very important clauses and some somewhat innovative approaches in it that are quite in line with Ontario's health care keeping, I believe.

Although the Liberal government has introduced this bill through Mr. Elston, we see it as quite in line, except for the one clause, with Bill 7. We feel it is in line the issue of individual rights that are basically supported by the Conservative government. We certainly see it as in line with the issue of collective rights and minority groups that are generally supported by the New Democratic Party. As such, I urge each of you to give very careful consideration to this bill, to support those issues that are very important for our patients and to do everything necessary to assure that a competent person has the absolute right to refuse treatment.

Mr. Reville: You have had a chance to look at the amendments that I have now tabled with the committee. Could you tell the committee whether you support those amendments?

Mr. Giuffrida: I have had a chance to review them. While I did not want to go into all of them in detail because some are technical, our program does support these amendments.

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Mr. Reville: Let me ask you the tough question. I know you are opposed to the idea of competent override and to the idea that a substitute decision-maker on behalf of an incompetent patient could be overridden. If that section survives the clause-by-clause, is it your opinion that Bill 190 should fail?

Mr. Giuffrida: As attractive as many of the provisions in Bill 190 are, it would be difficult to support a bill that had as a central thrust a provision that to our program's view violates a fundamental section of the Charter of Rights and Freedoms, the equality section that guarantees there shall be no discrimination based on mental handicap or disorder. We would have difficulty supporting the passage of a bill, however many attractive and important amendments were contained in it, that had that unacceptable provision.

Mr. Chairman: Thank you very much for your presentation. I am sorry I was not here for it all but I will have a chance to review it all.

The next presenter is from the Ontario Hospital Association. Please come forward. Welcome. I have one name, Ms. Shushelski.

ONTARIO HOSPITAL ASSOCIATION

Ms. Shushelski: I am Carolyn Shushelski from the Ontario Hospital Association. With me is Mrs. Hilary Short of the public affairs department. Hilary will be introducing our brief.

Mr. Chairman: Mrs. Short has been before us or around the committee

before. You can present any way you would like and then we will reserve time for questions following it.

Mrs. Short: Thanks very much and good afternoon. We are pleased to be here this afternoon to support Bill 190 on behalf of the Ontario Hospital Association and its members.

We recognize the very serious concerns that have been expressed by the patient advocacy groups about patients' rights and the right of involuntary patients to refuse treatment. However, we believe that there are exceptional circumstances in which a physician application for a review board hearing for authorization for treatment is justified in the interests both of good patient care and protecting the safety of the patient, health care workers and others. It is an avenue, we believe, that should remain open.

Our brief will now be presented by Carolyn Shushelski, who is a lawyer for the Ontario Hospital Association.

Ms. Shushelski: Just before I begin, I suppose the specific concerns the Ontario Hospital Association has relate to the fact that the patient who is competent but is involuntarily committed to hospital can say he does not wish to have treatment and this is not reviewable by a review board. This poses significant problems, I guess you could say. I do not think we can deny there will be some difficulties that we are going to have to adjust to.

In the brief itself, we do support Bill 190 for reasons I will set out as follows:

The OHA supports the provision in Bill 190 that would permit physicians to apply to the review board for a hearing if an involuntary patient who is competent has refused or the relative of an involuntary mentally incompetent patient has refused to consent to psychiatric treatment and if the physician believes that the patient could be helped by such treatment.

The law governing treatment of involuntary psychiatric patients must endeavour to protect the individual rights of patients, safeguard the safety and wellbeing of other patients in the hospitals, health care workers who work with the patients on a daily basis and visitors who come into our facilities to visit other patients.

The OHA believes that the proposed amendments to the Mental Health Act contained in Bill 190 strike a reasonable balance between these interests.

It is essential that the attending physician of an involuntary patient should have the opportunity to apply to the review board for an order authorizing the giving of specific psychiatric and other related medical treatment to the patient when he or she is of the opinion that the patient will benefit from treatment. Without this provision, hospitals and physicians, in some circumstances, would simply warehouse involuntary patients who have refused treatment that could result in improvement in that patient's condition.

A person may be committed to a psychiatric facility as an involuntary patient if he or she is, in the opinion of the physicians, a danger to himself or herself or others. At the same time, this person may be deemed competent to make decisions related to treatment. If an involuntary patient who is deemed competent refuses treatment, neither the doctors nor the hospitals can do anything to help that patient. All they can do is try to prevent the patient from injuring himself or herself, other patients, health care workers or

visitors who attend at the facility. Therapy and rehabilitation are clearly more desirable.

Hospital responsibility for health and safety within the institution is an important consideration for our facilities. Approximately 70 of all public hospitals in Ontario have psychiatric facilities under the Mental Health Act. These hospitals, like all public hospitals, are independent corporations with specific legal responsibilities that are imposed on the hospital boards. The boards have a legal duty to ensure that patients receive required care and that the work place is a safe environment for its health care workers.

If psychiatrists are denied an opportunity to appeal to the review board for authorization to treat seriously disturbed patients who have been judged to be dangerous to themselves or others, maintaining a safe environment will become considerably more difficult for hospitals.

Recently, there have been proposed amendments to the Occupational Health and Safety Act. As the hospital is an employer and subject to that act, some interesting questions are posed in respect of the recent amendments to the Mental Health Act. Under the Occupational Health and Safety Act, the hospital, as an employer, has a duty to take every precaution reasonable under the circumstances for the protection of health care workers.

A new draft regulation for health care facilities under the Occupational Health and Safety Act would propose that where a worker is likely to be endangered by violence from a patient in a public hospital or a psychiatric facility, the employer is to make readily available another worker or workers to give assistance.

No worker would be permitted to approach a violent, or as they put it in the draft, a potentially violent patient without being accompanied by at least one worker. In other words, hospitals are going to be put in the very difficult position of determining who should be at risk. The nurse may refuse to attend the patient as the patient is violent, and the legislation would support that. It would be behind her. However, there is another duty to care for the patients in our facilities.

Under the Occupational Health and Safety Act, workers already have the right to refuse unsafe work unless it places the patient in imminent jeopardy. Hospitals have a legal duty to ensure that the patient receives required care. Hospitals also have a duty to ensure that all reasonable measures are in place to protect staff. There is pressure at the present time from the various unions and the Ontario Nurses' Association is asking for clarification as to what imminent jeopardy is. The union workers feel--at least what they comment on is that they have rights as well as anyone else and that it should be easier for them to refuse what they see as dangerous work.

Those patients who are a danger to themselves or others and who require treatment but refuse such treatment obviously may pose a threat to health care providers and other patients. A greater awareness by workers of their own right to safety in the work place places the hospital in a very difficult position when the patient refuses treatment and the workers refuse to approach the patient.

It is inevitable that those individuals who will now refuse treatment will have to be more closely observed and possibly formally segregated from others within the institution. Additional staff will be required to provide vigilant around-the-clock observation. I think that is a very important point.

Our public hospitals that are psychiatric facilities play an important role in the community. What they are trying to do is to assist in the rehabilitation and integration of patients back into society. What we do not want to do is to segregate them. We want them to be part. Right now we do not have locked wards in our public hospitals. We have a floor that may be devoted to psychiatric care within the institution and the patients by and large are free to move about within the institution. What we do not want to do is to have wards that are more secure or segregated because that does not benefit the patients or the staff.

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Hospitals may have to reassess the measures they take to ensure the safety of staff and other patients in the institution. These measures may include more secure wards and 24-hour vigilance of the patient on a one-to-one basis. That is not unrealistic and it is entirely possible that this will be an outcome of legislation if patients are allowed to refuse treatment and it is not appealable to a review board.

The safety factor has a great deal to do with the issue of restraint. Contributing to the need for greater security measures is the fact that recent amendments to the Mental Health Act have required that health care staff only place the patient under restraint, not keep the patient under restraint. This necessitates constant vigilance over the patient who is a danger to himself or others.

I recently spoke with one of our public hospitals that has a psychiatric facility. I spoke with the physician who is in charge of the unit and the head nurse. The head nurse had indicated to me that she had very serious concerns about the future and the staffing ability within the psychiatric facility. She had indicated that recently two nurses had resigned from the psychiatric facility and had chosen to go and work in the intensive care unit. The reason they cited was that because of the recent changes in the restraint provisions, they no longer felt secure working in the psychiatric facility and could just as easily work in another unit within the hospital. I suspect there will be other transfers in the future as well, and further, I think it is going to be much more difficult to get nurses to work in the psychiatric facilities.

In summary, the fact that patients are allowed to refuse treatment, coupled with the changes in the use of restraints, will require hospitals to reconsider the manner in which care is provided for psychiatric patients in public hospitals. Some of these considerations are as follows: Increased staffing requirements to accommodate observation of patients who may pose a danger to themselves or others. This may require observation on a 24-hour, one-to-one basis. Reorganization of the physical layout of the psychiatric facility within a public hospital to ensure that other patients, the staff and visitors to the hospital are protected. Psychiatric patients who refuse treatment may exhibit behaviour that is disruptive to other patients in the hospital.

One of the most difficult situations is when you have a patient who may refuse treatment, particularly medication that could calm the patient so that he or she could get a relaxing sleep for the night. If he or she refuses that medication, not only does that patient suffer for the evening but many other patients on the ward will also have to endure the hours, and it could be endless hours, of disturbance that patient creates. Certainly that is not

unrealistic. It is very difficult to explain to other patients on the ward why they cannot get a rest when the disruption is ongoing.

Hospitals will have to ensure that they do everything reasonably possible to prevent the patient from causing injury or death to himself or herself, another patient and others who are within the facility. This is not unrealistic and there is a very definite legal obligation on hospital boards to ensure this. They have no choice. Increased security may be necessary, including, possibly, locked wards. Community hospitals with psychiatric facilities may be forced to transfer their patients to more secure settings. This poses the difficulty of where the facilities would be.

Hospitals may be exposed to liability if a patient, while in hospital, injures himself, another person, a health care worker or visitor.

We would like to comment on the professional responsibility of physicians and health care workers and their duty to treat. Physicians and health care workers are highly trained and committed to the care and rehabilitation of their patients, using the most progressive treatment available. Their skill and knowledge can and should be used, where appropriate, to improve the patient's psychiatric condition and quality of life. It seems only reasonable that those individuals who have the most training and are committed to their profession be the individuals who should be advising the patients, and the patients hopefully could benefit from that.

Further, professional ethics require that all physicians act to alleviate pain and treat disease and not do harm.

The Health Protection and Promotion Act is relevant as well here. We have heard arguments that patients in public hospitals can refuse to consent to medical treatment, so why should that be different for psychiatric patients? The Ontario Hospital Association submits that the review board authority to order treatment, as constituted under Bill 190, would be applied for and used judiciously and only when an involuntary patient is in need.

Moreover, there is relevant existing legislation under the Health Protection and Promotion Act regarding compulsory treatment for communicable diseases. The provisions seek to protect the community as a whole from those persons who suffer from a communicable disease that can be transmitted to others and who do not act responsibly or accept treatment. A duty is imposed on a physician under the Health Protection and Promotion Act to report to the medical officer of health any person who has a communicable disease and who refuses or neglects to continue the treatment in a manner and to a degree satisfactory to the physician.

Pursuant to subsection 35(2) of that act, a medical officer of health has the authority to make an order requiring any person who has a communicable disease that is a virulent disease, to do any of the following:

"(a) that the person isolate himself and remain in isolation from others;

"(b) that the person submit to an examination by a physician;

"(c) that the person place himself under the care and treatment of a physician; or

"(d) that the person conduct himself in such a manner as not to expose another person to infection."

Pursuant to subsection 35(3), if a person fails to comply with the order of the medical officer of health, the medical officer of health may apply to the court. The court may then make an order in respect of the person as follows, that he or she:

"(a) be taken into custody and be admitted to and detained in a hospital named in the order;

"(b) be examined by a physician to ascertain whether or not the person is infected with an agent of a virulent disease, and;

"(c) if found on examination to be infected with an agent of a virulent disease, be treated for that disease."

No legislation will cover every eventuality or completely eliminate problem situations. However, the changes proposed to Bill 190 do provide protection of patients' civil liberties, while still providing a means for physicians to apply to the review board in what they would judge to be an urgent situation. However, the one comment OHA would make is that the process of applying to the review board should not be so difficult that it deters physicians from making the application. The opinion of physicians must be considered.

Just a few comments on substitute consent for mentally incompetent patients: I am sure you are aware that the Attorney General has a committee that is reviewing substitute decision-making for mentally incapacitated persons. There are many groups on this committee and it is interesting to note that provisions in Bill 190 are somewhat similar to some of the provisions the committee has drafted. The OHA does not have a problem in terms of the order of precedence for substitute decision-making.

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Designation of a patient's representative: Social change and changing attitudes towards individual rights have led many to believe that this change would be appropriate. Hospitals do not disagree with the principle which would ensure, as far as possible, that treatment is in accordance with what the patient would desire.

However, it is important to ensure that the process to be followed in designating a representative within a health care institution is carefully planned. It should not become too complicated nor should it be too onerous for hospital administrations, physicians or nurses. The system must seek to avoid potential conflict situations between the health care worker and the patient, and must promote a therapeutic relationship between the health care provider and the patient.

A few comments with respect to the sections within Bill 190 that have been proposed. Under subsection 1b(1), concern is raised with respect to the term "apparently mentally competent." Provision should be made for circumstances when it is deemed that a person is not apparently mentally competent. Who is to make the decision as to whether or not the person is apparently mentally competent? Is it the physician, the officer in charge or the nurse at the bedside?

The process of transmittal under subsection 1b(7) may in some circumstances be difficult. It may not always be possible in a hospital setting to forthwith transmit certain documentation. The term "forthwith" imparts a legal connotation and certainly at times the health care providers must ensure that looking after the patient is really of the utmost importance. Therefore, we would recommend that terms such as "as soon as practical" would be more appropriate in a health care setting rather than the term "forthwith."

Provision should be made for those situations where the representative is not available or is unwilling to act. Further, it is possible that a patient may choose an inappropriate individual. He may wish a certain person to act on behalf of him but that person may clearly be completely inappropriate and may not even be well acquainted with that particular patient.

If procedural and administrative difficulties become burdensome, the health care providers argue that they are placed in situations which are too legalistic or adversarial and conflict with the intended therapeutic relationship that should exist in the hospital setting.

I have spoken to several administrators of the hospital about Bill 190, and none of them particularly opposes the provisions in Bill 190 specifically as it relates to the designated individual. The only thing they all say to me is that they hope we are not turning the hospital into an institution that is going to be more concerned with the legalistic requirements and impose same on them. The reason they went into the health care profession is they want to care for patients. That is why they are there. They certainly are willing to accommodate, but they have asked that we be reasonable in what we are asking of them.

Subsection 1b(8): this is just a comment on when revocation takes place. Is it effective from the time of the signing of the revocation or is it effective only after the representative is notified of the revocation? I assume it is as soon as the patient signs the revocation.

Proposed amendments to subsection 1b(8) would change the word "patient" to "person." I do not have a problem with that other than there is a referral back to subsection 1b(7), which talks about the officer in charge transmitting the document with respect to the patient. I assume it is clear here that our people in the hospitals are dealing only with the patient; therefore, is subsection 1b(8) referring back to subsection 1b(7) appropriate? I just ask for some clarification on that as well.

Mr. Chairman: I think probably the easiest thing would actually be to leave this until we get to clause by clause, if that is all right.

Ms. Shushelski: Okay, fine.

Again, under subsection 35a(8), there is a proposed amendment whereby the officer in charge is to notify the official guardian forthwith. I am informed that the hospitals are willing to comply with certain aspects of this legislation, but they have asked that terms such as "forthwith" be replaced with terms that may be more reasonable in their circumstances, such as "as soon as is practical."

The last comment I have is with respect to the Charter of Rights and Freedoms. We have heard argument that provisions in the Charter of Rights and Freedoms have application with respect to treatment of patients in psychiatric facilities.

Section 7 of the charter states that, "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." It is argued by some that the right to security of the person includes the right to refuse unwanted treatment. However, it can also be argued that section 7 of the charter guarantees that a person has a right to receive treatment to ensure the liberty and security of his person.

Further, section 1 of the charter "...guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The rights and freedoms set out in the charter are not absolute, and it may be necessary in some circumstances to limit such rights and freedoms where their exercise would be counter to the collective goals of society.

As stated above, persons who are a danger to themselves or others and who exercise the right to refuse treatment where such treatment could benefit them may pose a significant risk to life, liberty and security of health care workers, other patients in the health care institution and the public who attend at the facility. The Ontario Hospital Association submits that it is reasonable and justifiable that a person's decisions to refuse the treatment could be reviewed by the review board, since the overriding goal is the protection of the community.

This issue raises attention between two legitimate, though competing, goals. On the one hand, there is the important goal of protecting the rights of individuals and, on the other hand, there is the important goal of protecting public health in the face of threatened or actual violence from a patient who poses a danger. The task is to achieve the balance between the goals of protecting the public and respecting the individual's rights. The OHA believes Bill 190 can provide that balance.

In conclusion, we would ask that serious consideration be given to the amendments to the Mental Health Act contained in Bill 190. The amendments proposed by the Minister of Health (Mr. Elston) are in the interest of good patient care and provide adequate safeguards against the arbitrary treatment of psychiatric patients without their consent.

We have tried to lay out the issues for you. I am sure the advocates for the patient groups have done similarly. We hope there can be a balance achieved where the patients can receive care and the workers can be safe in the working environment.

Mr. Chairman: Mr. Callahan, do you have a question?

Mr. Callahan: Just two, if I may. As you know, Bill 7 kicked in on June 1, and we have yet to pass Bill 78. Hopefully, it will be passed tomorrow or Wednesday. Has there been anything that has come to your attention as a result of Bill 7 kicking in and Bill 78 not yet being passed? Have there been any instances of injury to health care workers or whatever?

Ms. Shushelski: In fact, there has been one incident that has come to me. It is not direct. It was basically secondhand. I cannot say I have the person who was actually involved in it, but apparently a patient who was seriously ill did manage to leave the hospital. He got out of the hospital. However, they did get the patient back before anything happened, with no untoward effect so far. That was sort of a quasi one. Nothing did happen in that case. I understand they got the police and they managed to round the patient back up.

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Mr. Callahan: Being new around here, can you tell me what the situation was prior to the legislative changes that were made by Bill 7? How did that come about?

Ms. Shushelski: Prior to June 1?

Mr. Callahan: No. In fact, prior to that legislation being in place. How did that come about to be brought in place where there was a review committee available? Bill 7 changed it, but--

Ms. Shushelski: Yes. Prior to that?

Mr. Callahan: --the legislation prior to that, how did that come into force? What brought that into force?

Ms. Shushelski: I think that was in effect for several years. The review board has been in effect for many years. I am sure Gilbert knows the exact date of that.

Mr. Callahan: Do you know what triggered that?

Ms. Shushelski: I do not, really.

Mr. Callahan: It is my understanding that this was brought about as a result of some injury or threat that health care workers experienced, and as a result of it the government of the day, along with, if I am not mistaken, the people who were concerned--I think the Ontario Public Service Employees Union was one of the unions--decided that this situation could not continue to exist and as a result of that the legislation was changed. Does that ring a bell?

Ms. Shushelski: It sounds possible, but I do not know.

Mr. Callahan: Okay. Thank you.

Mr. Chairman: If I was not in the chair, I would love to debate, but being in the chair, I have to be a good boy and make sure it works. I do have some real difficulties with the way you have argued the rights and freedoms section and with your jumps of logic, if I might be so bold, to go from the notion that the right to refuse or a competent person's decision to refuse should have a potential override in it because there is a possibility that that can be interpreted as a danger to society.

Ms. Shushelski: Do you have a problem with that?

Mr. Chairman: I have a real problem with that because it is suggesting that there is, necessarily, a connection between the two and that we, as a society, should put into the hands of some people the right to demand an override with all the emphasis being put on to the power of the physician in that override, no matter what you are saying here.

Ms. Shushelski: I appreciate what you are saying, but I--

Mr. Chairman: It is not necessarily a dangerous thing for somebody to say, "I do not wish this treatment." That is the assumption you are making in your argument.

Ms. Shushelski: The fact that someone just makes the statement, "I refuse the treatment"?

Mr. Chairman: Yes. Your argument on pages 15 and 16 is that somehow there is necessarily a connection between that and our need to protect ourselves.

Ms. Shushelski: The refusal of the treatment, coupled with the fact that there is a danger to society.

Mr. Chairman: You did not say that. You made it sound like that--

Ms. Shushelski: My apologies for missing the one. We will have to do a supplement and amend that, but in fact--

Mr. Chairman: That is the point I am making. Surely, you sort of make arguments about mixing apples and oranges when you say we should not, for instance, compare a psychiatric patient with a regular medical patient because they are different matters, and then you bring in the communicable diseases thing, which it seems to me is saying. "Do not mix apples and oranges but bring in pears." In terms of logic--

Ms. Shushelski: I am not sure that it is apples, oranges and pears. I do not quite understand what you are saying about the communicable diseases aspect. Surely, there is a law in place that would say you cannot go expose yourself as a danger to society because society will put limits on that.

Mr. Chairman: I am saying that is the issue. In this case, the issue might be the issue of competency being a really major issue behind what is at stake in Bill 190 and Bill 7, as far as I am concerned, and not this whole question of whether a physician should have an override capacity. The issue here is, is somebody a danger or not? That is what we should be dealing with, not the issue as to whether or not, automatically, a physician should be able to override a competent person's decision to refuse. That is an automatic right that we are providing under Bill 190, that a physician can take that to a review board. There is no question as to whether that person is a danger or not. Surely the issue is, is the person a danger?

Ms. Shushelski: By the fact that they are involuntary patients, they are--

Mrs. Short: The person has already been judged to be a danger to himself or others by being an involuntary patient.

Ms. Shushelski: They would not be an involuntary patient.

Mr. Chairman: You are arguing that every person who is actually involuntary in the institution, whatever state he or she is in, is necessarily a danger?

Ms. Shushelski: Maybe it is not as clear as it could be. I apologize if it is not. Specifically, the point we make here is that those persons who are involuntarily committed who are posing a danger to themselves or to others--and primarily under section 9 of the Mental Health Act, there are criteria under--those are the individuals we are speaking of here. I apologize if I have not made that clear, but when you are involuntarily committed, you are a danger to yourself or to others.

Mr. Callahan: That clears it for me. You are saying that anyone who is an involuntary patient has gone through that procedure already.

Mrs. Short: Yes.

Ms. Shushelski: Yes, they have.

Mr. Callahan: That person has been declared a danger to himself, herself or others.

Ms. Shushelski: Exactly, yes.

Mrs. Short: Yes.

Mr. Callahan: That is contrasted to the voluntary patient, which is what I think the chairman is talking about, where that designation has not been made.

Ms. Shushelski: Right.

Mrs. Short: You have already been judged to be a danger to yourself or others if you are an involuntary patient.

Ms. Shushelski: It may be possible. You left out the word "involuntary."

Mr. Callahan: Just for clarification, if they are involuntary patients, they remain there until the treatment is rendered and they are determined no longer to be a danger to themselves and can be released.

Ms. Shushelski: Right.

Mr. Callahan: I suppose one could say--and I think perhaps that is what you are arguing--that people have the right to life, liberty, security and so on, and that in fact the override of section 1 of the Charter of Rights and Freedoms that guarantees rights and freedoms subject to reasonable limits prescribed by law is the argument as to why the treatment should be rendered--

Ms. Shushelski: Should be given to the involuntary patient.

Mr. Callahan: --lest they be kept warehoused for ever.

Ms. Shushelski: Right.

Mr. Chairman: I knew I should not have started that.

Ms. Shushelski: I am glad you did. Now you have helped me clear it up nicely.

Mr. Chairman: I would like to get back into it, but I will not because it is irresponsible of me to do so, but thank you very much for your appearance today.

Parkdale Community Legal Services are next. Welcome. I have only two names, so obviously that is an inadequate start.

Mr. Callahan: Unless two of them are named Susan.

Mr. Chairman: That is right. Welcome. While the clerk is figuring out how to handle all this bundle of material that you have provided to us, would you introduce yourselves?

PARKDALE COMMUNITY LEGAL SERVICES

Mr. Green: Mr. Chairman, I apologize for the paper shuffling. Our presentation is a play in three acts, you might say, and that involves a fair amount of paper. I am Gerald Green, the clinic director of Parkdale Community Legal Services, a lawyer by training, although I hasten to say I am not yet a member of the Ontario Bar.

On my right is Susan Campbell, a community legal worker and an employee of Parkdale Community Legal Services, and on my left is David Draper, a lawyer by trade and also an employee of Parkdale Community Legal Services.

I will be the only one of the three of us who insults you by speaking directly from my text. Susan and David will highlight their comments, but you will have the full presentation to refer to at your leisure. What you will receive will be three sets of comments and a copy of a case from the state of New York that I will refer to at some length in my remarks.

I am speaking to you today as clinic director of Parkdale Community Legal Services, a legal clinic located just a few transit stops west of Queen St. Mental Health Centre in west Toronto. Parkdale Community Legal Services has provided legal representation for individual clients during and after their involvement with the mental health system as patients, on a broad spectrum of issues in mental health law, as well as in conventional legal matters.

We have represented clients for a number of years on such matters as involuntary civil commitment, warrants of the Lieutenant Governor, treatment applications and appeals therefrom, access to psychiatric services and findings of incompetence to manage financial affairs, as well as in cases not directly related to any disability, for example, housing, social assistance and family law matters.

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In addition, we have participated in a great number of committee hearings, commissions, studies and, we are sad to say, inquests as well dealing with such issues as patient care, the review process, housing for discharged patients, electroconvulsive therapy, the patient advocate program and advocacy for vulnerable adults.

I personally am also speaking to you as someone who, since 1973, has acted as legal counsel for people who have found themselves in the mental health system as patients. In 1977, I opened a law office on the grounds of a large provincial mental institution in British Columbia and I ran that office and did free legal work in it for the patients of the institution and for patients of other mental institutions in British Columbia for nine years.

I have acted as counsel for psychiatric patients in a substantial number of litigated cases, including challenges presently pending to the involuntary admission and detention provisions of the British Columbia Mental Health Act, these challenges being under sections 7 and 10 of the Canadian Charter of Rights and Freedoms, and to the practice of paying below-minimum wages to forensic patients who are employed within institutions in British Columbia

under section 15 of the charter. Both those latter challenges are still in litigation. On the first, the challenge to the Mental Health Act, the trial begins in October 1987; the second is set for trial in June 1988.

The focus of my remarks today is section 5 of Bill 190 and, in particular, the proposed new clause 35a(1)(a) of the Mental Health Act, which confers upon review boards the power to make orders for the forced treatment of competent involuntary patients who have refused to consent to "specified psychiatric and other related medical treatment."

I am here to urge upon you the following points. There is a long and cherished tradition in Anglo-American and Anglo-Canadian common law that the giving of medical treatment to a person without his or her informed consent to that treatment is the private wrong or tort known as battery, except where the treatment is given in a life-threatening emergency, or the recipient of the treatment is not legally competent to consent to medical treatment and the informed consent--and I emphasize the word "informed"--of someone authorized by law to give that consent on behalf of the recipient has been obtained.

This freedom from medical treatment to which informed consent has not been given is established in American jurisprudence as part of that liberty of which no citizen may be deprived without due process of law under the fifth and 14th amendments to the Constitution of the United States and under comparable provisions of the constitutions of many individual American states.

The due process clauses of federal and state constitutions in the United States are closely analogous to section 7 of the Canadian Charter of Rights and Freedoms, which provides that no person shall be deprived of life, liberty or security of the person, except in accordance with the principles of fundamental justice.

A competent person's right to have the final say in decisions pertaining to his or her medical treatment is established in American jurisprudence as a right that belongs equally to all persons, irrespective of whether they are thought to suffer from mental illness to a degree sufficient to make them subject to involuntary hospitalization. The deprivation of that right on the basis of mental illness is regarded as a denial of that equal protection of the laws to which American citizens are also entitled under the equal protection clauses of the fifth and 14th amendments to the Constitution of the United States and under similar clauses of many state constitutions. We have both a due process--translate "fundamentally fair procedure"--and an equal protection--translate "equality clause"--position here.

The equal protection clauses of federal and state constitutions in the United States are closely analogous to subsection 15(1) of our charter, which says, in part, that every individual has the right to the equal protection of the law without discrimination based on mental disability.

There is a broad trend in the cases decided by the American courts to hold that it is offensive to both the due process and the equal protection provisions of federal and state constitutions to allow competent involuntary mental patients to be given medical treatment, including treatment with psychoactive drugs, without their informed consent and to strike down as unconstitutional statutes which allow such treatment to be given.

The most recent example of this trend was the unanimous decision of the seven-member court of appeals of New York on June 10, 1986, in the case of *Rivers versus Katz*, that neither mental illness nor involuntary

hospitalization per se can stand as a justification for overriding an individual's fundamental right to refuse antipsychotic medication.

In that case, it was said that only temporarily "in an emergency situation, such as where there is imminent danger to a patient or others in the immediate vicinity" would the state be justified in allowing forcible administration of medication to a competent involuntary mental patient. In every other situation, it was held in *Rivers versus Katz*, such forced treatment would be lawful only after a judicial determination at a hearing in which the state would have the burden of demonstrating by clear and convincing evidence the patient's incapacity to make a treatment decision.

Mr. Callahan: Is that pre-charter or post-charter?

Mr. Green: This is post-US Constitution and post-New York state constitution. I submit that it is in a very similar context to what we have post-charter in Canada.

It was further held that even after a judicial finding that the patient lacks the capacity to make treatment decisions, a particular treatment can be given only where the state is able to establish by clear and convincing evidence that the following further criteria are met. "The proposed treatment is narrowly tailored to give substantive effect to the patient's liberty interest, taking into consideration all relevant circumstances, including the patient's best interests, the benefits to be gained from the treatment, the adverse side effects associated with the treatment and any less intrusive alternative treatments."

It is a certainty that the enactment of the provisions of Bill 190 allowing the forced treatment of competent involuntary patients will give rise to charter-based litigation, which the government of Ontario will be put to the time and expense of defending, at great cost to the taxpayers. Parkdale Community Legal Services will be delighted to provide counsel in that litigation if and when the opportunity arises. In the absence of Canadian authority on these issues, it is likely that our courts will turn to the authority enunciated by a distinguished court in a contiguous foreign jurisdiction such as New York and, if the reasoning of that authority is followed, the Ontario legislation will fall.

The real issue here is competency to make treatment decisions. Who is to decide which people are competent? What standards are to be used to determine competency? What procedures are to be followed in making that determination? In the event that there is a finding that an individual is not competent, what decisions can be made on behalf of that individual, by whom and for how long? We urge you to put this troublesome and ill-advised portion of Bill 190 out of its misery and to get on with the important business of enacting sound and sensible competency legislation.

1730

At this point, I would like to turn matters over to Susan Campbell for highlights of her part of our presentation.

Mr. Callahan: Could I ask a question, just before we do that, as to whether in the case of *Rivers versus Katz* there is a provision such as the one in section 1 of our charter that limits it being contrary to the charter in cases where the rights and freedoms set out in it are "subject only to such reasonable limits prescribed by law as can be demonstratively justified in a free and democratic society"?

Mr. Green: There is not. The Americans have an unusual approach to this. They are not constitutional absolutists. By the way, I hasten to point out that I took my legal training in the United States. This does not make me an expert, but simply one who is familiar with their vocabulary. Their approach is to say that none of the rights vouchsafed to their citizens by the various constitutional provisions is absolute.

The glaring example of that approach is Mr. Justice Holmes's dictum that falsely shouting "fire" in a crowded theatre is not protected free speech, even though the words of the first amendment are absolute: "Congress shall make no law...abridging the freedom of speech." So there is a very strong tradition of reading into their constitutional protections something very much like our section 1 and, accordingly, holding that statutes which impose what seems to be an infringement on those constitutionally protected rights do not necessarily fall.

Mr. Chairman: We are experiencing a bit of a time lapse. I will have to make sure we hold all rhetorical questions. We have to adjourn at six.

Ms. Campbell: In that case, I will try to be as brief as I can.

I am speaking about the impact of the right to refuse treatment and basically drawing from the research that also comes from the American experience. You have probably heard much from the submission of the Psychiatric Patient Advocate Office, but I will try not to repeat it. Unfortunately, I missed part of what that group said, so I do not know whether I am repeating it or not.

I was here the other day for the submissions of the Ontario Psychiatric Association and the Ontario Medical Association. I was very interested to hear their ideas of what might happen if we had the right to refuse treatment. From my review and study of the literature, I feel very much that what they have done is given a number of scare tactics to try to change our minds. The research, on the other hand, shows that what they are trying to suggest just does not follow.

The first concern was that, if competent psychiatric patients have the right to refuse treatment, the number of refusers will increase. The research does not follow on this. It shows that in incidences where medication refusal was studied, the average range of refusers, in the long term, was about 10 per cent. They found it was only a temporary situation for most people who refused, never lasting more than a couple of days.

It seems really important here to point out that this research measures only the incidence of refusal of medication treatment. It does not indicate a refusal of all kinds of treatments. Since there are alternative forms of treatment, it would be interesting if there was research to give us some idea of what would happen in that case.

Another of the fears that abound is that, without the ability to override a competent treatment refusal, our psychiatric institutions will become warehouses of untreatable psychiatric disorders and people will simply deteriorate beyond help. Again, the research does not support this conclusion. In Oregon, people stayed in hospital only 14 days longer. A New York study found that people also stayed longer, but a good deal of that time was taken up by the time taken for an administrative review, the time between the refusal and when the review took place.

We might only conclude from this that the extra time spent in hospital might be as a result of administrative delay rather than the state of someone's illness because of their treatment refusal. Whether people irretrievably deteriorate is beyond the scope of most available research.

What we would like to point out is that we know from our experience that quite frequently people are banned from receiving treatment at Queen Street Mental Health Centre. Most often this happens because they are too difficult to deal with and they do not comply with treatment plans. In plain English this means they are not taking the drugs that have been prescribed for them.

What happens in many of those cases is that people are then returned to the community and the complicating factors in whether people will deteriorate, in our experience, have to do with the deplorable housing conditions in which they live in the community, inadequately low incomes, malnutrition and the lack of other community supports. We have also seen, however, that when there are alternatives and adequate supports for people they do significantly improve and in some cases fully recover.

The next point is that untreated patients may become more violent as a result of refusing drug treatment, necessitating more restraint or seclusion. Again, the research just does not support this. I will not go into it in any detail; it is in the brief.

What I would like to mention here, though, of particular importance, is that some of the research looks at the state of health of refusers to find out that it improves. Refusers are not always displaying symptoms of illness but rather an expression of greater control over their lives. As more active participants in their own care, they often improve significantly.

This seems to be a very important issue in terms of gaining control over one's life. Patients in psychiatric facilities lose a great deal of control over their lives as a matter of their hospitalization. They may lose their clothes. They have routines defined for them on a daily basis. There are not too many choices. When someone is trying to exert some control over their life, that should be encouraged.

Competent refusers ought to have treatment imposed on them where the refusal is a symptom of their illness. There is research which shows that--and I believe this was discussed the other day: we were talking about the three categories of refusers being the situational refuser, the stereotypic refuser and the symptomatic refuser. The last two, while I do not quite know the difference, both appear to be refusing for some reason to do with their illness, but the situational refuser refuses for a variety of reasons. The research shows that the majority, 57 per cent, are situational refusers.

In an environment where the prevalent attitude is that treatment refusal is a symptom of illness, the only way available for many people is to refuse treatment in order to gain some control over their lives. I would like to point out, and this is not in the brief, examples we have seen time and time again. When a treatment refusal issue arises, it is often when a patient wants to negotiate the dosage of their medication. It is often when they want to change from one type of medication to another. Sometimes it is because they know their own case history better than someone else does; for example, they are in crisis and go to see a doctor, cannot see their own doctor, say, "I cannot take such and such kind of medication," and get it anyway. It almost seems as though when you say you do not want some kind of medication, that is exactly what you are going to get.

One important side benefit to be found in the research is that in an attempt to deal with the conflicts that do arise when patients object to or refuse treatment, clinicians spend more time talking to patients about their illnesses and both the benefits and side-effects of treatment. It may be that compliance with treatment will increase when patients have this information. Adequate information is the basis of informed consent, an issue which you have heard about from many people in these hearings.

1740

Increasing the communication between clinicians and patients is very important. In our experience, the thing we probably hear most often from our clients is that we are the only ones who really listen to what they have to say. I may be using a statistic that I should not be using at this point, but I am sitting on the evaluation of the Psychiatric Patient Advocate Office. One of the preliminary findings we have found so far is that in talking to patients about what is the most valued function of the advocates or what seems most important about what the advocates do, the answer has been that they listen and they are the only ones who listen.

The intrusiveness of psychiatric treatment, its serious side-effects and the need for patients to regain control over their lives make refusal of treatment a matter that must be seriously considered.

I would like to close my part with one statement that sort of wraps up our fundamental concerns. It was expressed by the late David Solberg, former legal counsel of the Psychiatric Patient Advocate Office. "What impact will it have for you to lose the choice over whether you will be a good person or a bad person, whether you will do things right or you will do things wrong? What if we could create a system where you would only do the right thing and never because you chose it, but because you have no other option? How does this promote humanness? How does this promote treatment? How does this promote human growth and change?"

Mr. Draper: We have chosen to focus on what we see as the central issue of Bill 190; that is, the override provision. It is important to remember that what we are talking about is imposing nonemergency treatment on competent patients. Our submission is that Bill 190 is simply taking us down the wrong track. The issue is determination of competence and what results from that finding. The simple position that we think is the correct position is that competent psychiatric patients should have the same right as anyone else to refuse medical treatment, including psychiatric treatment.

There are lots of peripheral issues that are complicated, complex and difficult. We certainly concur with the idea of setting up a body to look at the issue of competence to the extent that it is not already being examined by the groups under way at the present time. Therefore, our suggestion is that this committee simply reject the override provisions in Bill 190 and proceed with the forum to consider the issue of competence.

In Bill 190, however, there is some dealing with the issue of competence. Section 1 of the Mental Health Act follows the common law fairly closely and provides that, "'mentally competent' means having the ability to understand the subject matter in respect of which consent is requested and able to appreciate the consequences of giving or withholding consent."

For the purposes of treatment applications, Bill 190 would modify that definition somewhat. The definition set out in subsection 35(1) of Bill 190

says, "'Having the ability to understand the subject matter in respect of which consent is requested' in the definition of 'mentally competent' means having the ability to understand the nature of the illness for which treatment is proposed and the treatment proposed."

Our concerns about this second definition of competence extend beyond the awkward phrasing of the section. In our opinion, it encourages a catch-22 situation that already exists for psychiatric patients; that is, the tendency of doctors to find incompetent any patient who disagrees with the diagnosis or argues that treatment is not therapeutic or that he simply does not need the treatment.

We concede that psychiatric illness can interfere with competence. However, in our view, the definition contained in Bill 190 encourages or is not sufficiently guarded to prevent this catch-22 situation where a psychiatric patient, by merely disagreeing, loses his or her competence.

In the material that has been handed to you is a case study of a recent case we were involved in. I will not, in the interests of time, go through that, except to point out that Bill 190 puts a great deal of faith in the protection that can be provided by the review board.

In this recent appeal that was taken to the District Court from a commitment decision, our appeal against the commitment was unsuccessful. However, in the course of delivering the decision, the District Court judge had a great deal to say about the type of evidence the review board was prepared to consider: evidence from the clinical record, hearsay evidence presented at the hearing. A list of eight incidents relied on by the board was reduced to four by the District Court judge who said that the other four incidents simply should have been given no weight because of the speculative, hearsay nature of the evidence. The point I wish to make is that the review boards, at least at this stage, certainly are not operating as a great protection for psychiatric patients.

Finally--and I think reflected in the manner in which we have made our presentation--we think the override provision of Bill 190 is a fatal flaw. Mr. Reville posed the question to the representatives of the Psychiatric Patient Advocate Office--and, by the way, we agree there are some good things in Bill 190--"If the override provisions survived, would you support Bill 190?" Our position is no, the override provisions are a fatal flaw.

Mr. Andrewes: I wonder if I might ask Mr. Sharpe if he is confident that he can defend Bill 190, as proposed now, in a challenge under the charter.

Mr. Sharpe: We have heard many discussions, pro and con. It would be, of course, a matter of the cogency of section 1 evidence that could be mustered. I take it we are speaking now of the override of a competent patient who is involuntary, and not the incompetent patient's relatives' decision. I see the first as being, if there is an area for attack under the charter, clearly that would be it.

We heard the Ontario Hospital Association and the Ontario Medical Association present case histories. To the extent that those case histories create a tremendous dilemma for the health care system, much of that material would be useful again as section 1 evidence as a defensive position. We have heard some equating of the health protection laws, the laws involving communicable diseases, which universally deal with committal and treatment of people who refuse and may well be competent. To the extent that our laws on mental health committal are vulnerable, those laws would be as well.

I have no crystal ball. I am confident we could put forward a very good case. To the extent that the uniform law commissioner exercise that was discussed last week has had most provinces and the territories put forward their best legal minds on the issue of what would be the best compromise, most provinces currently have an automatic power to treat on committal with no review mechanism, no review board, no court appeals, no due process, no criteria.

To the extent that those provinces have agreed on what is being proposed in Bill 190 and the motions as a compromise that would withstand charter attack--and I must say that most of the lawyers involved from those provinces have examined the charter issue and are of the view that those provisions would withstand a charter attack under section 1--then I am confident; but of course, as you know, any lawyer can present an opinion. Until the Supreme Court rules, we do not really know for sure where we would stand on the issue. Certainly, given all of the evidence presented by groups such as the OMA and the OHA, the communicable disease law and so on, I would think we could put a very good case forward that said the Bill 190 approach is a good compromise position and that section 1 would support reasonable limits on the otherwise inherent right of any individual to refuse.

1750

Mr. Callahan: What about the roadside breathalyser?

Mr. Sharpe: Yes, there are other cases, that is right. I was not going to spend time here in the committee giving a legal opinion.

Mr. Chairman: No doubt we may some day get to know whether or not it will stand up.

Thank you very much for your presentation today. I am sorry to cut you short but we have a guest who has come from Kitchener.

Mr. Parsons, if you would like to come forward; Mr. Borovoy was unable to attend and Mr. Cooke, Kitchener, had indicated that Mr. Parsons was very interested in appearing before us and that there was a little bit of a foul-up. Mr. Cooke had not brought it to our attention at the appropriate time, so we will try to make some time available for you now. My hands are a bit tied about how much time; so I am not talking anymore. I am going to let you go.

KENNETH N. PARSONS

Mr. Parsons: Thank you. I will try not to keep you long. I cannot compete with Mr. Borovoy, but I do have a few things I would like to say.

I speak as a board member of Waterloo Regional Homes for Mental Health, which runs several group homes in Kitchener, and I have been asked to speak on behalf of a group called the Core Area Ministry of Kitchener, which is comprised of 13 downtown Kitchener churches, and also on behalf of the House of Friendship, which has 105 beds for transients and other needy people in Kitchener-Waterloo.

One of the concerns that moves me to be here is that I also have a schizophrenic son. He is 38 years old and I have been on the hot seat for many years in relation to the mental illness legislation. Incidentally, the legislation is a misnomer: you are talking about mental illness, not mental

health and I think there should be a clear distinction concerning that.

I also think there is an overemphasis on the idea of "dangerousness." I wish that more concern were given to a process of deterioration, which we observe in a number of people with mental illness. The illness tends to be cyclical in nature. They may go for long spells and be relatively well and functioning not too badly, and then they will hit a very bad patch and they will need treatment.

One of the concerns I have about this act is that there seems to be no reference to that process of deterioration. I tried to draw the committee's attention in a written brief a few days ago to something called the Wisconsin's Fourth Standard of Civil Commitment, which reads like this: "Inability of an individual to make an informed decision regarding treatment, coupled with evidence to support the probability of serious mental or emotional deterioration unless treatment is provided."

I think, from my reading, there is a tendency in different parts of the United States to consider this issue of significant deterioration as a movement away from the concept of "dangerousness." I wish that we, as a committee, would take that into consideration.

I am especially concerned because I know of people who go to hospital, to the emergency or crisis clinic. They know they are becoming ill, they feel this deterioration setting in, and they are turned away. There is no provision for any kind of review.

I think there should be. I think there should be a provision for people who are voluntarily seeking help for a mental illness to have that case reviewed. They are just turned away, and the law is such that they are forced into another catch-22 situation. The catch-22 situation is that they have to prove they are dangerous.

A few weeks ago in Kitchener, we had one individual in one of the House of Friendship residences who knew he needed help. He went to our hospital and was turned away. Having some method in his madness, he promptly came to Toronto, booked into a hotel, set fire to a mattress and ended up in the Clarke Institute of Psychiatry. That is playing Russian roulette.

There should be a provision whereby people voluntarily seeking treatment get it. That is not the only case of its sort. I could quote other cases. In one case at least, in Kitchener, it culminated in a suicide. The person was turned away from hospital. I believe the process of deterioration should have a bearing on this legislation.

I am also concerned as a parent about this question of access to clinical records. I believe that this will deter medical professionals from putting down information that could be helpful to other medical personnel. I speak as a former teacher. The Ontario school records work that way. Teachers are not going to put down information that might get them into trouble, and such information might have been helpful to other teachers and to the students. I think you will have the same sort of possibility with the medical profession.

The House of Friendship runs a home for 12 ex-psychiatric patients and it always has something like 25 per cent of the transient population who are actually ex-psychiatric patients. They have been called the boat people of

North America and that is exactly what too many of them are. They are drifting and have been abandoned.

The House of Friendship is concerned about what it considers to be the over-emphasis on drug therapy. It wants the point to come across that this does not assist in learning life skills or social skills that are important to the every day survival of these people. The House of Friendship proposes that what the community needs is more community support workers who can assist with those skills. In Kitchener, we had two aftercare program workers handling a case load of about 30 ex-patients. There are close to 200 other people waiting to have such aftercare workers.

In the Waterloo Regional Homes, in the group homes that we run, we have established a very good record of keeping people out of hospital and part of my appearance here today is to appeal to the Legislature in general to start becoming more serious about community aftercare programs. We are getting six per cent of the mental health budget, one half of one per cent of the Ministry of Health's total budget.

In the summer Experience '87 program, the Ministry of Health has 267 positions. Two of them have been allocated to community aftercare programs and that gives you the measure of what deinstitutionalization is really all about. If we had the community aftercare programs and the community support, I do not think there would be as many people needing Bill 190. I believe it is time all parties started putting money into the aftercare.

My son has suffered many of the things we have heard this afternoon: treatment with drugs which almost blinded him and about which I am still corresponding with the Ombudsman. He has become more incapacitated. It has taken us many years to get an aftercare worker and it is a thoroughly inefficient and costly system. My own son is receiving many thousands of dollars worth of drugs because of inadequate mental health services. The Canadian Mental Health Association has referred to the mental health system as a nonsystem and I think that is about the size of it.

I would like to quote something from Dr. Heseltine's report. He said this: "For many seriously mentally ill persons who have been hospitalized, the real suffering begins after discharge. Aftercare and rehabilitation services can spell the difference between remaining in the community and being rehospitalized. The adequacy of support services is crucial." That is Dr. Heseltine.

1800

Please, in this legislation do not overlook the need for community programs. There is something very wrong. We are concerned.

I believe this started with the Charter of Rights. Some of you perhaps know the story of Procrustes in Greek mythology. Procrustes was an innkeeper and he had a bed. People who came his way and wanted accommodation got it but they had to fit the bed. If they were too long, he would just cut them off at each end. If they were too short, he stretched them on the rack. I feel that people with psychiatric illnesses are being stretched on the bed of the Charter of Rights.

Almost every day, I have people phoning me up, widows in their 70s desperate to get treatment for people. We need to intervene in this period of deterioration. I believe you are neglecting that. One of the grounds referred

to in the Mental Health Act of some years ago was serious neglect of the person. That happens frequently and doctors seem to ignore it. I think attention should be paid to that aspect.

Mr. Chairmen: I am not hearing sounds that would force us to adjourn. Instead, I am listening to Mr. Reville and then Mr. Callahan.

Mr. Reville: I want to thank you for coming, Mr. Parsons. I congratulate you on all the work you have done in your area in this regard. He is too modest by half. He also leads a very dynamic family-and-friends group in the Kitchener area, all of whose members have similar kinds of concerns as Ken has.

I have one question for you. What Bill 190, as proposed by the government, will allow is that if your son is in hospital and the doctor says he should have a neuroleptic and you say no, that doctor can go to a review board and force your son to take that neuroleptic. With your experience, I would think you would not want that to happen.

Mr. Parsons: I would want informed consent. Somebody said a little while ago that the patient's advocate was the one who listened. I have had an awful lot of experience with psychiatric institutions in Ontario and there is not enough listening to the patients or their families. If there were, I think there would be less need for forced consent. As a teacher, I do not like force of any sort but I am prepared to think there may be cases where it is necessary.

Mr. Callahan: I have just one comment. Maybe the parliamentary assistant can help me in this regard. Peel region received funds, and I cannot remember what the amounts were, for Peel Activities and Recreation, which is an aftercare rehabilitation process. You have indicated that you have not received any funds.

Interjection.

Mr. Callahan: I cannot remember what the amount was but it was significant.

Mr. Reville: Mr. Parsons told you the numbers, 94 per cent of institutions and six per cent in the community.

Mr. Callahan: I am referring to Peel region. It did receive considerably more money than it had ever received under any former administration. The point I am trying to make is that there is a recognition by this government of precisely the points you are making.

One final thing is the situation of the schizophrenic who becomes an involuntary patient. As I understand it, and from experience with people I have known who are schizophrenic, the very thrust of it is that if they fall off their medicine, they become paranoid about being given medicine. Without the type of recommendations that are made in Bill 190, they do not get that treatment. I do not know how they get out. I guess if they do not take it, they do not get out. I suppose that is the nature of it. In the interim, you have parents who have to live through the living hell of their loved one not receiving the very substance that will bring him back to the normalcy he had.

We had two reports from the Ontario Medical Association today, grand

jury reports. As near as I can figure, they were both involuntary patients; both of them resulted in death, one gentleman by jumping out of the window.

Mr. Chairman: He was not in an institution when he did it. Bill 190 would not have affected him.

Mr. Callahan: Actually, he was not. The one who went out the window was in an apartment.

Mr. Chairman: That is right.

Mr. Callahan: He ran down the hall and jumped out the window.

Mr. Chairman: That is what I said. Bill 190 would not have covered it; he was not in an institution.

Mr. Callahan: What I am trying to figure out is--I guess he got out. He took his medicine so he could get out and then fell off the medicine again.

Mr. Parsons: I do think that many of these extreme cases would be prevented if there were proper community care. In Kitchener, we have about 200 people receiving injections at a clinic, which is actually the responsibility of London Psychiatric Hospital. That hospital's catchment area extends from Windsor to Waterloo county, far too big an area to know a local community's needs adequately. Each patient receives three minutes of the staff's time after all the paperwork is done, barely time to put the needle in and take it out. There is no real opportunity to listen or consult or find out how the person is progressing. If they are fortunate, they see a psychiatrist once in nine months. If there were proper community resources, you would find a lot of these cases would never get to the extremes they are getting.

I am appealing for a bigger emphasis on community care. These people belong in our communities. I do not want my son ever to be, as some of our sons and daughters are, 140 miles away from his home community in the middle of nowhere, south of Blenheim. It costs them \$45 or more to come home for a weekend; they get five dollars a week. That situation is not acceptable to me at least, and to a lot of other parents I know. I am sorry if I am emotional.

Mr. Chairman: That is understandable. Thank you very much, Mr. Parsons, for coming. Even if it was a short time before us, I am glad that you were able to join us.

Committee members, tomorrow we start clause-by-clause. In looking at the number of amendments that are before me at this point, I suggest we not wait till four o'clock tomorrow, that the sooner we can get down here after orders of the day the better. We will see how much we can accomplish before we adjourn tomorrow night. Right now we are adjourned until then.

The committee adjourned at 6:07 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

MENTAL HEALTH AMENDMENT ACT

TUESDAY, JUNE 9, 1987



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

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Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitution:

Reville, D. (Riverdale NDP) for Mr. Grande

Clerk: Carrozza, F.

Staff:

Tucker, S., Registrar of Regulations

Witnesses:

From the Ministry of Health:

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)

Sharpe, G., Counsel, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

June 9, 1987

The committee met at 3:56 p.m. in committee room 15.

MENTAL HEALTH AMENDMENT ACT
(continued)

Consideration of Bill 190, An Act to amend the Mental Health Act.

Mr. Chairman: I call the meeting to order. This is the discussion of Bill 190, An Act to amend the Mental Health Act. We have completed the public hearing section of our deliberations. Today, in approximately two hours, we are going to attempt to amend this bill and have it ready to be sent back to the Legislature. We have a large number of amendments, both from the government and from the New Democratic Party. It might at the outset seem mildly on the impossible side to consider getting this done, but if we work promptly, I think we can manage it.

First, we should talk a little bit about the process. This is how we will handle it. Basically, we will go section by section. A government motion is accepted by the chair before a motion from an opposition party. If the government motion passes, then, if there is a similar motion from an opposition party, that motion is disposed of. It is possible to move an amendment to a government motion. We discuss the amendment to the motion first, and then move to the motion itself.

If you wish, at any time you can stack the votes and say that you would like this vote to be stood down for a period of time, or that you would like all the votes to be taken in a certain order. That is your privilege. If, as well, you wish to ensure that you have all your members in at the time of a crucial vote, you can inform me. You will then have up to 20 minutes to bring your members into the committee to make sure that you have the voting representation that you wish on that individual item.

Mr. Davis: For clarification--I am not sure I heard you correctly--you said that if there is a government motion, it is placed first and you vote on it.

Mr. Chairman: Unless it is amended, yes.

Mr. Davis: If there is an amendment, does the amendment go to the opposition, and then the third party, and you vote third party, opposition and then--

Mr. Chairman: Yes. In theory, for instance, if subsection 1 was being amended by the government, and the official opposition moved an amendment to that, then the third party, if it chose, would have to move an amendment to your amendment. It could not be to any other part of the government's amendment for it to be in order, or we would have to deal with your amendment first. I will clear this up as we go along each time so that you can be absolutely sure of the fairness of the chair in these things.

Mr. Davis: You know I have great confidence in you, Mr. Chairman.

Mr. Reville: Now that you have just explained that, may I suggest one change? The change is that, because of the way the NDP amendments work and because of the essential nature of one of the sections of this bill, I would propose that we hold down everything until we get to subsection 35a(1) on page 6, which is the section on competent override. That is the section on which most of the debate has occurred. Depending on how that fares, some of my amendments may be redundant or unnecessary, and a great deal of time will be saved.

Mr. Chairman: I will accept that as a procedural motion. Basically, we would need it to be such, and to be agreed upon by a majority. What is the parliamentary assistant's view?

Ms. Hart: I would agree to that; the government would agree to that.

Mr. Chairman: Mr. Andrewes? It is agreeable. All right. What we will do is deal with the substantive matters under section 35a of the act and then move to the other matters, starting at the beginning again.

The way we will operate is to read the section, where appropriate. I will just get the amendments before me. Again, on this section, the way it is usually done is that the government amendment is moved first. If there were government amendments to this section, as well as New Democratic Party amendments on the same point, normally the government amendments would be discussed first. However, the first amendment I have is, in fact, an NDP amendment.

On section 35a:

Mr. Chairman: Going through section 35a, as I see it, I have no amendment to subsection 35a(1). I have an amendment to clause 35a(1)(a).

Mr. Reville: This is another problem. Ten of my amendments relate to one subject and one subject only, and that is the age 16 references throughout the bill. There are a great many of them. I would choose at this point to hold that particular amendment down, because when we go back to the front of the bill, we can have one determination of whether the committee thinks that is appropriate. If it is, a great many amendments can be got out of the way.

Mr. Chairman: On the other hand, if you choose, you could also have it dealt with now and have the same thing apply--that wherever that matter applies, you just indicate it as we go through. Whichever you prefer.

Mr. Reville: Why do we not debate the age 16 thing once, stand down the amendment that I have for clause 35a(1)(a), and then I want to suggest, seeing that there is no government amendment to that section, I would like to make this amendment. I do not have anything written down, so you will have to write it down. I move that section--

Mr. Chairman: Before I can stand down anything, it has to be presented. The other option would be to leave the section open and not close it off, and then deal with it afterwards.

Mr. Reville: Why do we not leave it open? I think we need only one debate on the age 16 thing.

Mr. Chairman: Fine. So you have a motion for me under subsection 35a(1) that you have to read to me. Is that what you are telling me?

Mr. Reville: Yes. Let me just make sure I do it right. I move that subsection 35a(1) be amended by deleting clause 35a(1)(a) and renumbering (b) appropriately.

Mr. Chairman: The normal approach on this is to vote against the subsection, rather than to move its deletion, and indicate that you oppose it.

Clerk of the Committee: If the vote carries, it would be deleted.

Mr. Chairman: If your position carries on it, then we just delete it as we go along. You can deal with the substance as you go through.

So what we would do here presently is I would read out the motion for which there is no amendment that exists in the act at the moment, just so we are all clear with what we are dealing, and there is discussion on that and a vote. If the vote is in favour of it, we would include it in the bill. A vote opposed to it, of course, takes it from the bill.

Subsection 35a(1): "The attending physician of an involuntary patient may apply to the review board for an order authorizing the giving of specified psychiatric and other related medical treatment to the patient,"

After that I have clause 35a(1)(a). Do you wish clause 35a(1)(a) to be included as well?

Mr. Reville: The discussion should be on clause 35a(1)(a).

Mr. Chairman: I would include in that we are also dealing with (a) "where the patient has attained the age of sixteen years and is mentally competent to consent to such treatment, if the patient has refused to consent;"

Mr. Reville: The question now is shall clause 35a(1)(a) stand as part of the bill. I would like to say that it should not stand as part of the bill. By far the vast majority of the opinion that has been presented to this committee, by such diverse groups as the Ontario Association of Professional Social Workers, the Canadian Criminal Lawyers' Association, the Canadian Mental Health Association and others, sees the override of a competent decision by a patient as being offensive and incongruous, in fact, and that it is a violation of virtually all the principles of common law and perhaps also a violation of the Charter of Rights.

I do not want to go on about this, because I think the point of view has been put many times very strongly. My view is that committee members might well want to join me in voting against this section so that it shall not stand as part of the bill.

Ms. Hart: We are taking the step of supporting Mr. Reville's amendment, even though it is put forward as a part of the government bill. If I can just refer very briefly to the history of this issue. It was a matter that came up in Bill 7. That was changed. It was voted on one way in committee and it was changed in committee of the whole House. There was a public outcry that there had not been enough consideration given to it. The government responded to that outcry and put forward this bill, this particular section. We have, in that period of time, had a lot of public discussion, not just at this committee, but with the minister and with various levels of the ministry.

It has become clear to us, in the course of that consultation, that there is a very strong feeling in the community that there should not be an override for competent involuntary patients.

Together with that history, I can tell this committee, as we have heard from some of the groups, that the Minister of Health (Mr. Elston) has indicated there will be a study very shortly on the whole issue of competence which has been sought by virtually every group that we have heard before us and every group that has spoken to the minister. The minister is content to withdraw his support for this clause, and we will be voting against it.

Mr. Chairman: No speakers? If there are none, we will take the vote. Shall clause 35a(1)(a) carry? All those in favour, please indicate. Those opposed.

Motion agreed to.

Mr. Chairman: Clause 35a(1)(a) shall not stand as part of the bill.

How do we deal with clause 35a(1)(b) to something that does not exist?

Clerk of the Committee: It has to be renumbered.

Mr. Chairman: Clause 35a(1)(a) is deleted. Again, Mr. Reville, you do not wish your amendment to be the standard as part of the 16-year question?

Mr. Reville: Clause 35a(1)(a) not standing as part of the bill makes my amendment to that section redundant.

Mr. Chairman: Yes. I am asking now about clause 35a(1)(b) where you have two amendments, one of which is the 16 years of age.

Mr. Reville: Maybe this would be an appropriate time to debate the whole 16-year question and get it out of the way, if you wish.

Mr. Chairman: Is that appropriate? We have to deal with it only once and, one way or another, if it is in, then it will be automatically put in by counsel in all the appropriate places; and if it is out, then it is out, and we will not put those motions any further.

Ms. Hart: May I ask a question before you proceed? Do I understand correctly that we will be dealing with all of subsection 35a(1) at the moment?

Mr. Chairman: Yes. We are dealing only with section 35a at this time. What I am saying is that if we make a decision on this section around the age of 16, then it will be understood that that will apply throughout the act.

Mr. Reville moves that clause 35a(1)(b) of the act, as set out in section 6 of the bill, be amended by striking out "has not attained the age of sixteen years or" in the first and second lines.

1610

Mr. Reville: For those of you who have a package entitled NDP Amendments, this amendment is the fourth from the end. What this amendment and the other nine companion amendments do is establish age 16 as the usual but not absolute age upon which competence is proved under the act. If the patient is under 16, the presumption of incompetence may be rebutted by the doctor, review board or court.

The goal of the amendment is to eliminate unjustifiable discrimination

on the basis of age, which I believe is contrary to section 15 of the Charter of Rights. On the other hand, substitutes would still have to be 16 years of age or over. Perhaps one can imagine any of one's teen-age children, the precocious 14-year-old or 15-year-old who, in fact, would be outraged at the suggestion that he was automatically to be deemed incompetent to make decisions on his own behalf.

Basically, this removes the absolute designation of somebody under 16 as incompetent and it becomes a rebuttable presumption. I think that is probably the correct way to say that.

That is the amendment I would make there and that would be the argument I would make on behalf of the other amendments I will then put if they still pertain.

Ms. Hart: The government will be supporting Mr. Reville's amendment.

Mr. Chairman: Any other comment? Mr. Andrewes?

Mr. Andrewes: No.

Mr. Chairman: You are supporting.

All those in favour, please indicate.

Motion agreed to.

Mr. Chairman: I have another amendment to clause 35a(1)(b) in your name, Mr. Reville. Would you like to move it?

Mr. Reville: Yes. This actually gets us down to subclause (i). By the way, this is the third amendment from the end in the package.

Mr. Chairman: Mr. Reville moves that clause 35(a)(1)(b) of the act, as set out in section 6 of the bill, be amended (a) by adding "or" at the end of subclause (i) and (b) by striking out subclause (ii).

Mr. Reville: Regrettably, this amendment relates back to the very first page of the bill. Nevertheless, I will explain it to you.

This amendment gets rid of subclause (ii), because an amendment to a previous section, if carried, will make sure there will never be a situation in which an incompetent person does not have a substitute. My second amendment adds to the bottom of that wonderful list on page 2 of the bill a paragraph 8, called "the official guardian." Regrettably, we have now fallen into a bit of a trap of getting ahead of ourselves.

The point of this addition is that, whatever the circumstances of the patient, in those cases where a patient has not designated a substitute decision-maker and there is no family whatsoever, the official guardian would then be added at the bottom of the list for when all other options were exhausted and, in fact, could represent the patient's interests in a way that is done in many other circumstances. I think that is appropriate.

People might want to stand that section down to see what happens with the amendment to subsection 1a(2).

Mr. Chairman: It is definitely possible, although we can always reopen the section.

Mr. Reville: You could reopen it, I guess.

Ms. Hart: We will be supporting this amendment, but it does relate back to our motion 2. One is dependent on the other. Is it your number 2?

Mr. Reville: It relates back to my number 2, actually.

Mr. Chairman: It is possible just to go through this. We do not really have to stand this down. If you already understand what your positions are on the other matter, the second amendment by Mr. Reville, which has not yet officially been put, then you can pass this with that understanding. You can say so now and we can proceed on this.

Mr. Reville: If that is understood, then I am prepared to proceed.

Mr. Chairman: Ms. Hart, is that your position?

Ms. Hart: Yes.

Mr. Chairman: Fine. Further discussion on this matter? Seeing none, I will take the vote.

All those in favour of Mr. Reville's amendment to clause 35a(1)(b), please indicate.

Motion agreed to.

Mr. Chairman: I see no further amendments to that subsection. Shall clause 35a(1)(b), as amended, carry? Carried.

On subsection 35a(2), there is an amendment from the government. This is government motion 13. They have all been very handily numbered for us. Thank you very much.

Mr. Reyecraft moves that subsection 35a(2) of the act, as set forth in section 6 of the bill, be amended by striking out "and" at the end of clause (a) and by adding thereto the following clauses:

"(c) the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and

"(d) the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c)."

Would the parliamentary assistant like to speak to that?

Ms. Hart: Very briefly, that is just expanding the criteria which must be taken into account when determining whether or not treatment should be made. It is actually part of a number of motions, 12 to 14.

Mr. Chairman: It is just adding new factors which must be taken into consideration. Further discussion?

Mr. Reville: I believe this is from the work that was done on the uniform mental health act, and these other two considerations are appropriately added to those which the review board would take into consideration. We will support this amendment.

Mr. Chairman: Any further discussion? Seeing none, all those in favour of Mr. Reycraft's amendment, please indicate.

Motion agreed to.

Mr. Chairman: Shall subsection 35a(2), as amended, carry? Carried.

I have no amendments to subsection 35a(3). Shall subsection 3 carry? Carried.

I do have an amendment from the government on subsection 35a(4). This is motion 14.

Mr. Reycraft moves that subsection 35a(4) of the act, as set forth in section 6 of the bill, be amended by striking out "and" at the end of clause (a) and by adding thereto the following clauses:

"(c) the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and

"(d) the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c)."

I presume the reasons are identical. All those in favour, please indicate.

Motion agreed to.

1620

Mr. Chairman: Shall subsection 35a(4), as amended, carry? Carried.

I have no amendments to subsections 5 or 6. Shall those subsections carry? Carried.

On subsection 35a(7), there is a government amendment, number 15.

Mr. Reycraft moves that subsection 35a(7) of the act, as set forth in section 6 of the bill, be amended by striking out "where the patient has attained the age of sixteen years and is mentally competent" in the first, second and third lines.

Ms. Hart: This section ensures that the patient as a party has a right to proceedings before the review board even if the patient is under the age of 16 or is not mentally competent.

Mr. Reville: I support the government's amendment, and I can indicate at this time that I will be withdrawing my amendment because the government has already achieved the same purpose.

Mr. Chairman: Shall subsection 7, as amended, carry?

Motion agreed to.

Mr. Chairman: On subsection 8, I have a government amendment, which is numbered 16.

Ms. Hart: It is slightly different from the one that--

Mr. Chairman: Ms. Hart moves that subsection 35a(8) of the act, as set forth in section 6 of the bill, be struck out and the following substituted therefor:

"(8) Where the patient has not attained the age of 16 years or is not mentally competent,

"(a) the person authorized under section 1a to consent on the patient's behalf; or

"(b) under the circumstances described in subsection 1a(4), all of the persons described therein,

"are also parties to the proceedings.

"(8a) The officer in charge shall notify the official guardian forthwith after an application is made under this section or section 35b in respect of a patient determined to be not mentally competent to consent to psychiatric and other related medical treatment where it appears to the officer in charge that the patient will not be represented at the forthcoming hearing.

"(8b) Upon receiving a notice under subsection (8a), the official guardian shall represent the patient at the hearing of the application unless the official guardian is satisfied that another person will represent the patient."

Mr. Chairman: For all members who do not have it, at the end of subsection 8a, after the words "medical treatment" would be added "where it appears to the officer in charge that the patient will not be represented at the forthcoming hearing."

Would you like to speak to the motion?

Ms. Hart: Very briefly, this motion ensures that the relative who would usually be involved, or his personal representative, will also be a party to proceedings at the review board. It also ensures that the patient will always be represented before the review board.

Mr. Reville: I support the government motion, but I have an amendment thereto, which is the last amendment in my package, and again it relates to the age 16 thing.

Mr. Chairman: If you would like, the easiest way would be just to take the--is this understood?

Mr. Tucker: Yes. As I understood it, what you said, Mr. Chairman, was that you wanted legislative counsel to make all the appropriate amendments on this.

Mr. Chairman: I think all we really have to do at this stage is indicate that you would wish it to apply there.

Mr. Reville: Indicate an amendment is necessary.

Mr. Chairman: There is a consensus on that one.

Mr. Tucker: That is fine.

Motion agreed to.

Mr. Chairman: I have no amendments to subsections 9 or 10. Shall those subsections carry? Carried.

Section 35a, as amended, agreed to.

On section 35b:

Mr. Chairman: We are dealing with 35b and then going back. Is that how I understand it? Thank you.

On section 35b, I have an amendment from the government.

Ms. Hart.: Number 17, please.

Mr. Chairman: Mr. Reycraft moves that subsection 35b(1) of the act, as set forth in section 6 of the bill, be amended by striking out "An involuntary" in the first line and inserting in lieu thereof "A" and by inserting after "sections" in the second line "1a."

Ms. Hart: This motion provides voluntary patients with the same right to challenge findings of incompetency by appeal to the review board as is now available for involuntary patients.

Mr. Reville: I support the intention of the government's motion. However, I have an amendment to it which relates again to the age of 16 but in this case is somewhat different in wording, so I had better move it.

Mr. Chairman: Mr. Reville moves that the motion to amend subsection 35b(1) of the act, as set out in section 6 of the bill, be amended by adding at the end thereof, "and by inserting after 'determined' in the first line 'or presumed.'"

Mr. Chairman: What you are really doing is amending the initial government motion rather than the amendment that has been put forward, which is just the wording change on the voluntary side. Would it maybe make more sense to take the vote on the government motion and then to move your motion to the amended motion? Would that be all right with you?

Mr. Reville: All right, fine; it does not matter to me.

Mr. Chairman: It might be more straightforward. So we are still dealing with Mr. Reycraft's motion, which is removing the words "an involuntary" etc.

Any further discussion on that matter? There seems to be a consensus. All those in favour, please indicate.

Motion agreed to.

Mr. Chairman: Would you like to speak to your motion, Mr. Reville, on inserting the words "or presumed"?

Mr. Reville: It is the same argument as we have been discussing all along, that you can determine or presume competence or incompetence, and it

just brings the section as amended by the government into line with the rest of the bill.

Mr. Chairman: Ms. Hart?

Ms. Hart: We will be defending the amendment.

Mr. Chairman: There is government support. Any further discussion? Seeing none, all those in favour of Mr. Reville's motion, please indicate.

Motion agreed to.

Mr. Chairman: All those in favour of subsection 35b(1), as amended, please indicate. Carried.

Subsections 35b(2) and (3)? Carried.

Section 35b, as amended, agreed to.

On section 35c:

Mr. Chairman: Mr. Reycraft moves that section 35c of the act, as set forth in section 6 of the bill, be amended by striking out "35a" in the first line and by adding thereto the following subsection;

"(2) section 35a applies with necessary modification to a person,

"(a) who is remanded or detained in a psychiatric facility pursuant to the Criminal Code (Canada); and

"(b) who, in the opinion of the attending physician, is suffering from mental disorder of a nature or quality that likely would result in,

"(i) serious bodily harm to the person,

"(ii) serious bodily harm to another person, or

"(iii) imminent and serious physical impairment of the person,

"if the person did not remain in the custody of a psychiatric facility,

"as if the person were an involuntary patient."

Ms. Hart: This motion ensures that persons held in hospital under criminal process will only be susceptible to treatment orders where they also meet the criteria to become involuntary patients.

1630

Mr. Reville: I support the intention of the government amendment in this connection, but I do not believe the amendment has quite caught it all, so I would like to make further amendments.

Mr. Chairman: Certainly.

Mr. Reville: I move that the government amendment be further amended by adding, after the word "modifications" in subsection 2, "where the review board is satisfied that a person..." That is the amendment.

Mr. Chairman: It is in order.

Mr. Reville: There is more. We would then further amend the government amendment by striking the words "if the person did not remain in the custody of the psychiatric facility" and substituting therefor "if the person did not remain in the custody of a psychiatric facility."

If anybody thinks that is totally incomprehensible, I agree with you. In fact, when this little discussion is concluded, we will find out whether we have the right words. Are those the right words, Mr. Sharpe?

Mr. Sharpe: Could you please give me the last words again that you just read out?

Mr. Reville: Take a coffee break for a second.

Mr. Chairman: I am wondering if we cannot do this in parts. That might be easier. Instead, let us take Mr. Reville's motion to the first section separately, and then deal with this latter part. Would that be all right?

Mr. Reycraft: Treat it as two amendments?

Mr. Chairman: I do not think we have to treat it as two amendments in that I do not think there is a second amendment. It is different than we thought.

Mr. Reville: Yes, in fact, can you separate somehow the words I said first and pretend I never said the second group of words?

Mr. Chairman: I will. Therefore, Mr. Reville moves that the government amendment to section 35c of the act be further amended by adding, in subsection 35c(2), the words "where the review board is satisfied that" after the word "modifications" and removing the word "to."

Mr. Reville: That is correct. You have it.

Mr. Chairman: Does everybody understand?

Ms. Hart: The government will be supporting that amendment.

Mr. Chairman: Any further discussion? All those in favour, please indicate. The motion carries.

Mr. Chairman: Shall Mr. Reycraft's amendment, as amended, carry?
Carried.

Mr. Chairman: Shall section 35c, as amended, carry? Carried.

Section 35c, as amended, agreed to.

Mr. Chairman: Now we will move back to the very beginning of the bill. I will continue as I have been doing. That is, I do not think I will read the sections into the record, I will read in only the amendments. That should keep us on target as we move through.

There are no amendments to section 1, as I see it. Shall section 1 carry?

Section 1 agreed to.

Clerk of the Committee: There is one amendment.

Ms. Hart: Definition. I thought it was section 1a.

Mr. Chairman: That is moved reopened by Mr. Reville. Those in favour? Agreed.

On section 1:

Mr. Chairman: I have an amendment, which is government motion number 1. Mr. Reyecraft moves that section 1 of the bill be amended by renumbering subsection 1 as subsection 2 and by adding thereto the following subsection:

(1) Section 1 of the said act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by adding thereto the following clause:

"(ba) 'informal patient' means a person who is a patient in a psychiatric facility under the authority of a parent, guardian or committee of the person appointed for the patient under the Mental Incompetency Act."

Ms. Hart: This definition is included because the new concept of "voluntary patient" was enacted in December 1986. That made the term "informal patient" confusing. With this, it has been clarified.

Mr. Chairman: Is there any other discussion on the matter? None? All those in favour, please indicate.

Motion agreed to.

Mr. Chairman: Shall section 1, as amended, carry?

Interjection.

Mr. Chairman: Another one? I am sorry, you are right. Motion 2 by the government.

Mr. Reyecraft moves that section 1 of the bill be amended by adding thereto the following subsection:

"(3) Section 1 of the said act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by adding thereto the following clause:

"(sa) 'related medical treatment' means medical treatment or procedures necessary for (i) the safe and effective administration of the psychiatric treatment or (ii) the control of the unwanted effects of the psychiatric treatment."

Ms. Hart: This is again a clarification definition. The provision limits the purpose and circumstances for medical treatment ancillary to, and complementary to, the psychiatric treatment authorized by the review board.

Mr. Chairman: Any discussion?

Mr. Reville: I support this amendment.

Mr. Chairman: All those in favour, please indicate.

Motion agreed to.

Mr. Chairman: I see no further amendments. Shall section 1, as amended, carry?

Section 1, as amended, agreed to.

On section 1a:

Mr. Chairman: Mr. Reyecraft moves that subsection 1a(1) of the act, as set forth in section 2 of the bill, be struck out.

Since this is striking out the whole subsection, we just vote against it, the way we operated with legal counsel regarding numbers, etc. where necessary. Therefore, if you wish this to be deleted, you vote against the subsection.

Mr. Andrewes: That means the definition currently in the act stands.

Mr. Chairman: Yes, that would be correct. Is there any discussion as to why this would be an appropriate thing?

Ms. Hart: Perhaps I could just try to make it a little clearer. It is no longer necessary. That is why we are placing this.

Mr. Reville: I would like to speak to that. We should vote against subsection 1a(1), because this particular definition of "patient" reaches out into the world and snaps up all sorts of people whom we would not want to be snapped up by this bill. This is why it is important that this not stand as part of the bill. It means this act would then apply to anybody walking down the street who might have spent some time as a patient. We do not want that.

Ms. Hart: May I ask Mr. Sharpe to add something?

Mr. Sharpe: The provision was put in there simply to ensure that patients who are released from hospital will still be able to have access to their clinical records. It was simply there for the purpose of dealing with clinical records, not with treatment. There certainly has been some confusion as to whether the treatment provisions might also extend to these people. Therefore, since the definition already appears in the act itself, there is no sense in adding to the confusion by having it here.

Mr. Chairman: Thank you. Further discussion?

Mr. Reville: Call the question.

Mr. Chairman: All those in favour of subsection 1a(1). please indicate.

Mr. Andrewes: This is not on the amendment.

Mr. Chairman: It is not on the amendment, which was out of order.

All those in favour of subsection 1a(1), please indicate. None. Those opposed? It is defeated and will not stand as part of the bill.

1640

Mr. Chairman: I am presuming that Mr. Reville's--there are two motions.

Mr. Reville: I have another one on age 16, but then I have another one as well.

Mr. Chairman: We understand that the age-16 factor will be included here, legal counsel.

Mr. Tucker: Yes. Taken out.

Mr. Chairman: Taken out rather. Therefore, we would deal first with the government amendment which is amendment 4.

Mr. Reycraft moves that paragraph 1 of subsection 1a(2) of the act, as set forth in section 2 of the bill, be struck out and the following substituted therefor:

"1. The committee of the person appointed for the patient under the Mental Incompetency Act."

Mr. Hart: The reason for this motion is to make it absolutely clear that only the committee of the person, not of the estate, can give a substitute consent to treatment.

Mr. Andrewes: Not what? Sorry?

Ms. Hart: To make it clear that only the committee of the person can be a substitute decision-maker for consent, not the committee of the estate. As you can appreciate, in some cases the public trustee, for example, might be the committee of the financial affairs of an incompetent patient.

Mr. Reville: I support this motion.

Mr. Chairman: Is there any discussion?

Mr. Andrewes: Can I just be clear on what Mr. Reville's previous amendment has done here? We have deleted in the second line the words "has not attained the age of sixteen years or." Is that correct?

Mr. Reville: Yes.

Mr. Andrewes: So it should read "on behalf of a patient who is not mentally competent if the person has attained the age of sixteen years."

Mr. Chairman: That is right.

Mr. Andrewes: For substitute consent, the person must be 16 years of age.

Mr. Chairman: That is my understanding of it. That will apply in every location where this whole question arises.

Dealing with Mr. Reycraft's motion, all those in favour, please indicate? Carried.

Mr. Chairman: I believe the next motion is also a government motion.

Ms. Hart: Motion 5.

Mr. Chairman: Mr. Reyecraft moves that paragraph 2 of subsection 1a(2) of the act, as set forth in section 2 of the bill, be amended by adding at the end "or 1c."

Ms. Hart: This provision ensures that the patient representative who is added to the list of substitute decision-makers can be either appointed by the patient or by the review board, as the case may require. I think that ties in with motion 9, which is yet to come. That is the government motion that deals with the procedure at the board.

Mr. Chairman: All right. Do members understand this? Do you want to stand this down until we deal with that matter; leave the section open, then come back to it?

Mr. Andrewes: Let me be clear here. Paragraph 2 reads "the patient's representative, appointed under section 1b," and that will now be amended to read "1b or 1c."

Mr. Chairman: That is right.

Mr. Andrewes: All right. And the explanation again, please?

Mr. Reville: You have to get to section 1c before you can figure it out. Why do we not stand that down? It becomes automatic once we get to section 1c.

Ms. Hart: I am content to do that.

Mr. Chairman: All right. We will stand this down and come back to it.

The next amendment I have is also--no, it is not.

Mr. Reville: I think it is one of mine.

Mr. Chairman: I have a feeling this is Mr. Reville's. Let me see how we are dealing with this. We have passed paragraph 1a(2)1, as amended. Have we? Did we do that? We do not have to because we just replaced it. We are standing down paragraphs 1a(2)--

Ms. Hart: We are standing down paragraph 1a(2)2.

Mr. Chairman: Sorry. We are standing down paragraph 1a(2)2. Now we are dealing with paragraph 1a(2)3, to which there is no amendment.

Mr. Reville: I have an amendment to the end of that list. Once you get down to paragraph 1a(2)7, I have a paragraph 8.

Mr. Chairman: As I understand it, we have paragraphs 1a(2) 3, 4, 5, 6 and 7, to which there are no amendments at this point.

All those in favour of those paragraphs staying in the bill, please indicate? Carried.

Mr. Reville moves that subsection 1a(2) of the act, as set out in section 2 of the bill, be amended by adding thereto the following paragraph:

"8. The official guardian."

That is in order. You have spoken to this once.

Mr. Reville: I spoke to that once, and it seemed to be acceptable to the committee at that time.

Motion agreed to.

Mr. Chairman: We will leave the section open until we come back to take the final vote on this amendment.

Subsections 1a(3) to 1a(6), inclusive, carried.

Subsection 7, as amended, carried.

Subsections 8 and 9 carried.

We will come back to dealing with the whole section 1a when we have that other matter before us.

On section 1b:

Mr. Chairman: Subsections 1b(1) to 1b(3), inclusive, carried.

Mr. Reycraft moves that subsection 1b(4) of the act, as set forth in section 2 of the bill, be struck out and the following substituted therefor:

"(4) The attending physician shall inform the patient in writing of the patient's right under subsection 1 within 48 hours after the patient is admitted or registered to the psychiatric facility."

Ms. Hart: The purpose of this motion is that often, on admission, patients are too ill to understand the rights advice given to them. This motion permits the doctor to delay for a short while telling the patient his rights, to a time when the patient can better understand the explanation. The duty to inform remains intact.

Motion agreed to.

Mr. Chairman: Mr. Reycraft moves that subsection 1b(5) of the act, as set forth in section 2 of the bill, be struck out and the following substituted therefor:

"(5) As soon as practicable, the officer in charge shall inform all persons who are patients of the facility at the time of the coming into force of this act in writing of their rights under subsection 1.

Ms. Hart: This is a transitional provision. and because hundreds of patients are involved, it was thought to be more realistic to use the expression "as soon as practicable" rather than "promptly" in advising all patients of this new right.

Motion agreed to.

Mr. Chairman: Subsections 1b(6) and 1b(7) carried.

Mr. Reycraft moves that subsection 1b(8) of the act, as set forth in

section 2 of the bill, be amended by striking out "patient" in the first line and inserting in lieu thereof "person."

Ms. Hart: This is a technical amendment. The word "patient" is too narrow. Any person can make an appointment of a personal representative and that person should also be able to revoke that appointment, rather than just a patient. He might no longer be a patient or he might never become a patient.

1650

Mr. Chairman: Discussion?

Mr. Andrewes: It is in keeping with Mr. Reville's amendment back in--where was that amendment?

Mr. Chairman: Section 35.

Mr. Andrewes: No.

Mr. Chairman: At the very beginning?

Mr. Andrewes: Yes.

Mr. Chairman: The one we deleted, subsection 1a(1)?

Mr. Andrewes: Yes.

Mr. Chairman: This is in keeping with our deletion of the definition of "patient" that was in the old subsection 1a(1).

Mr. Sharpe: There is that. There is also the aspect that, the way it reads, only a patient can revoke the appointment of a personal representative. Any person may appoint a personal representative before he is hospitalized. He may then choose someone else. He may want to change his mind. If subsection 1b(8) said "patient," he would not be able to do that until he became a patient, which is anomalous, so clearly we should be using the broader concept of "person."

Mr. Chairman: Is there any discussion or question? Seeing none, shall Mr. Reycraft's amendment carry?

Motion agreed to.

Shall subsection 1b(8), as amended, carry? Carried.

Section 1b, as amended, agreed to.

Mr. Chairman: We have a new subsection 1c of the act, a government amendment, which is motion 9(a).

Mr. Reycraft: Just before I read this in, may I ask the parliamentary assistant whether we want to put forward this amendment as printed, or do we delete the clause "who has attained the age of sixteen years," given the other amendments?

Ms. Hart: It remains the same. I thought you were talking about the word "patient" as opposed to "person."

Mr. Chairman: I gather we read it into the record as printed and then debate it.

Mr. Reycraft moves that section 2 of the bill be amended by adding thereto at the end the following section of the act:

"1c(1) A patient who has attained the age of sixteen years is not mentally competent to appoint a representative and has not named a representative under section 1b has the right to apply to the board for the appointment of a representative requested by the patient to give or refuse consent on behalf of the patient for the purpose of paragraph 2 of subsection 1a(2).

"(2) An attending physician who determines that a patient is not competent to appoint a representative shall as soon as practicable inform the patient in writing of the patient's right under subsection 1.

"(3) The notice shall be in the form prescribed by the regulations and shall inform the patient of the powers and responsibilities of a representative under this act.

"(4) The patient, the person proposed as a representative, the person who would be authorized under subsection 1a(2) to consent on behalf of the patient if no order is made by the board under this section and such other persons as the board may specify are parties to a proceeding before the board under this section.

"(5) The board shall appoint a person as a representative for a patient only if the patient approves of the appointment and the board is satisfied that the person,

"(a) has attained the age of sixteen years;

"(b) is apparently mentally competent to give or refuse consent on behalf of the patient;

"(c) consents to the appointment; and

"(d) in the board's opinion it is in the patient's interest to appoint the person as a representative.

"(6) The board may appoint a person other than the person requested by the patient to be the patient's representative.

"(7) An appointment made by the board may be subject to such conditions and restrictions, if any, as are approved by the patient, set out in the appointment and not inconsistent with this act."

Ms. Hart: This provision permits a patient, even though not mentally competent, to request that the review board appoint a specified person to whom the patient feels an affinity to represent the patient when making treatment decisions.

Mr. Reville: It is no longer necessary to put my amendment, because the government has taken care of my concern.

Mr. Chairman: Do you have any other concerns?

Mr. Reville: No.

Mr. Chairman: Mr. Andrewes, anything? No discussion.

Motion agreed to.

Mr. Chairman: We move now to section 3.

Mr. Reville: Let us not do that just yet.

Mr. Chairman: All right. We now return to subsection 1a(2) and go to paragraph 2. This is to insert the new words "or 1c" after "1b." Now that we have a 1c to deal with, that can be done. Since it was passed unanimously, I presume you will not want to discuss it. All those in favour, please indicate. Carried.

Shall subsection 1a(2), as amended, carry? Carried. Shall section 1a of the act, as set out in section 2 of the bill, in its totality, as amended, carry and stand as part of the bill? Carried.

Mr. Reville: I have a number of amendments that are properly inserted here, I believe.

Mr. Chairman: You are right. We will now be developing a subsection 2(2), if these carry.

Mr. Reville: Just on an administrative basis, I would like to point out that the amendment I am now going to read is called "6 corrected" in the top right-hand corner.

Mr. Chairman: Right. It was handed out as a separate package.

Mr. Reville: The clerk will give you "6 corrected."

There are three pieces of paper stapled together, all of which say "corrected" after a number.

Mr. Chairman: Mr. Reville moves that section 2 of the bill be amended by adding thereto the following subsection:

"(2) The said act is further amended by adding thereto the following section:

"1d(1) A person who has not attained 16 years of age is presumed to be not mentally competent to consent for the purposes of this act.

"(2) The presumption that a person is not mentally competent is subject to a determination by the attending physician, the review board or a court, pursuant to section 35 that the person is mentally competent."

Mr. Reville: It again relates to this presumption of incompetence and it allows that a doctor, a board and a court can deal with that matter. It relates to the rest of the discussion of the precocious 15-and-a-half-year-old.

Motion agreed to.

Mr. Chairman: Mr. Reville moves that the bill be amended by adding thereto the following section:

"2a. Subsection 15(3) of the said act is repealed."

Mr. Reville: This is a little used subsection, subsection 15(3), which allows a criminal court judge to force treatment. I do not believe this is necessary or appropriate, having regard to the scope of Bill 190, which provides a thorough means of treating people under Lieutenant Governor's warrants and other patients.

Mr. Chairman: The motion is in order. The clerk of the committee was worried initially that this was dealing with the Mental Health Act, rather than parts of Bill 190, but it is in order. It has been done before, as they say.

Ms. Hart: We will be supporting this amendment.

Mr. Chairman: Thank you, Ms. Hart. The government will be supporting. Any discussion?

Mr. Andrewes: I do not think I have received a copy of that particular amendment in the package.

Mr. Chairman: This was in the original package.

Mr. Andrewes.: Yes, the original package.

1700

Mr. Chairman: I should have indicated to you, Mr. Andrewes, that the last motion was a replacement motion and therefore the ordering would have been accurate.

Any further discussion on Mr. Reville's motion? None? All those in favour, please indicate. Carried.

Motion agreed to.

Mr. Chairman: I have one more, section 2b. Mr. Reville, how are your vocal cords? Do you want to split this up with Mr. Allen?

Mr. Reville: No, my vocal cords are wonderfully fine, as you shall soon discover.

Mr. Chairman: Mr. Reville moves that the bill be amended by adding thereto the following section:

"2b. The said act is further amended by adding thereto the following section:

"28a. (1) The minister may establish and maintain a system of community mental health services in accordance with the following principles:

"1. The planning, arrangement and delivery of support to each person shall be determined by the particular needs of the person.

"2. Each person who is to be provided with such services shall be encouraged to participate in planning the person's treatment and service plan.

"3. The system shall respond to the individual as a whole person,

delivering the necessary type and degree of support without regard to age or degree of disability.

"4. Each person shall be considered to be entitled to live and receive age-appropriate services in the least restrictive setting consistent with the person's needs, potential and abilities.

"5. The system shall give to each person the maximum opportunity to participate in the mainstream of community life.

"6. The system shall monitor and flexibly adjust the supports and services it provides in order to remain appropriate and responsive to each person served by the system as the person's needs change.

"7. The treatment and service plan for each person served by the system shall be reviewed at least annually.

"8. The system shall have defined geographic areas and the existing and newly developed resources and supports and services shall be co-ordinated in the manner that most effectively meets the needs of the persons served by the system in each such area.

"9. The system shall be designed to encourage each person served by the system to acquire the skills necessary to live, work and function in the community.

"10. The responsibility for planning, development, co-ordination and delivery of the services in each geographic area shall be delegated to a specific authority.

"11. The system shall co-operate with advocacy bodies that are free from conflict of interest and are intended to assist persons served by the system to enforce their rights.

"(2) The community mental health service may include the following components:

"1. Community housing services, including a range of supportive housing, approved homes, homes for special care and services to residents in designated boarding homes.

"2. Psychosocial services, including rehabilitation assessment, case management, social skills training, social therapeutic clubs, social network therapy, self-help groups, vocational and educational services including supportive work programs, financial services and family services.

"3. Medical and psychiatric services, including access to family physicians, psychiatrists, crisis centres, brief and partial hospitalization, home treatment and regional hospitalization.

"4. Co-ordination, including local offices or agencies to co-ordinate the planning and delivery of mental health services within each geographic area and encouragement of collaboration among service providers.

"5. Advocacy services to assist persons served by the system in enforcing their rights in psychiatric hospitals, homes for special care, general hospital psychiatric units, nursing homes and community mental health facilities."

Ms. Hart: On a point of order, Mr. Chairman: While I am in sympathy with the aims of this proposed section, I would ask that it be ruled out of order because it is totally at odds with what we have been doing in Bill 190.

Bill 190 deals with institutional care and with treatment of patients within institutions. This proposed amendment by Mr. Reville has to do with care outside of institutions, and really should not be in the Mental Health Act at all. Probably, it should be more properly in the Ministry of Health Act. I would ask you to rule it out of order.

Mr. Chairman: A question on the point of order, Mr. Andrewes?

Mr. Andrewes: I am not so sure I accept Ms. Hart's point. I think one of the arguments put forward in discussion about the competent override by a number of groups that came here was the fact that community-based services were lacking, the fact that the ministry had failed dismally to proportion its expenditures fairly among institutional and community-based programs.

I think one of the compelling reasons we felt we needed to maintain the competent override was the fact that, with this lack of service to redress the problems confronting people in their communities, the other last resort was to leave the competent override in place.

I will certainly bow to your wishes, Mr. Chairman. I think there is a lot of substantive discussion necessary on this amendment, if you are willing to accept it as an amendment. There is perhaps the need for some opportunity to debate the various clauses in some detail, but I am willing to accept your ruling.

Mr. Reville: The amendment that I have suggested flows from very strong presentations made to us, not only by the Community Mental-Health Programs Federation and the Canadian Mental Health Association but also by the very last deputant yesterday, Mr. Parsons, who is a parent of a schizophrenic in the Kitchener area and who spoke very movingly about gaps in community mental health programming.

What I have offered are some guidelines for the creation of community mental health services. They are indeed permissive. I think they do not offend order by saying, "The minister must do this," but in fact, "The minister may do these things."

It strikes me that rights without entitlements are kind of cold. This talks about the kind of entitlement the minister might want to set in place. The elements therein, by the way, are those developed in a document called Framework for Support, by the Canadian Mental Health Association, national division. I had an opportunity to speak about that across the country.

Mr. Chairman: Although I have a great deal of sympathy for the position put by both Mr. Reville and Mr. Andrewes, given the kind of context a lot of presenters made their comments in, it is difficult for me to find this in order within the context of this bill, which is dealing specifically with the question of rights within the institutions. This is probably more properly an amendment to acts which enable the Minister of Health to bring forward programs of various kinds.

There is also the whole question, even though it is permissive--and I agree the wording is better than having it a "shall"--that the expenditure of funds can be seen to flow from this extension. I would at this stage have to

rule it out of order. The only really direct connection I can see is the question of advocacy and the potential role of review boards. Even then the subamendments are dealing with a much larger role for advocates, so I would have to rule it out of order at this stage.

Any questioning of the chair? All right, we will move on. We have moved all the subsections of section 2. Shall section 2, as amended, carry and stand as part of the bill? Excellent.

Section 2, as amended, agreed to.

1710

On section 3:

Mr. Chairman: Just to make sure I am not missing anything, I have just been informed that government motion 10 is being withdrawn.

Mr. Reville: Sorry. Is government motion 10 withdrawn?

Mr. Chairman: It is withdrawn.

Mr. Reville: I have a motion in that case.

Mr. Chairman: Mr. Reville moves that section 3 of the bill be amended,

(a) by renumbering subsection (1) as subsection (1b); and

(b) by adding thereto the following subsections:

"(1) Clause 29(1)(b) of the said act is repealed and the following substituted therefor:

"(b) 'patient' includes former patient, outpatient, former outpatient and anyone who is or has been detained in a psychiatric facility.

"(1a) Clause 29(3)(a) of the said act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out 'has attained the age of 16 years and' in the first and second lines."

Mr. Reville, would you like to explain that to us?

Mr. Reville: It clarifies that anyone detained in a psychiatric facility, even though not technically a patient, that is, a person who might be on a form 1, a 72-hour assessment order, has the same right of access to the clinical files as other patients do.

Mr. Chairman: The government will be supporting. Is there any discussion?

Motion agreed to.

Mr. Chairman: You have another one here for--

Mr. Reville: Yes, I do. I have two more age-16 ones. We should move these ones?

Mr. Chairman: They should both be moved.

Mr. Reville moves that section 3 of the bill be amended by adding thereto the following subsections:

"(1c) Clause 29(3)(b) of the said act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out 'has not attained the age of 16 years or' in the first and second lines."

and

"(2b) Clause 29(3)(e) of the said act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out 'has not attained the age of 16 years or' in the second line."

Ms. Hart: The government will be supporting the amendment.

Mr. Chairman: Mr. Andrewes agrees.

Motion agreed to.

Mr. Chairman: Now I have no other amendments to section 3.

Section 3, as amended, agreed to.

On section 4:

Mr. Chairman: I have an New Democratic Party amendment. This is "11 corrected" from that extra group you received just this afternoon.

Mr. Reville: Right.

Mr. Chairman: Mr. Reville moves that section 4 of the bill be amended,

(a) by renumbering subsection (1) as subsection (1a); and

(b) by adding thereto the following subsections:

"(1) Subsection 29a(1) of the said act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

"(1) A patient who is mentally competent is entitled to examine and copy at the patient's own expense the clinical record of the patient or a copy of the record."

and

"(1b) Clause 29a(14) of the said act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by inserting after 'determined' in the first line 'or presumed.'

"(1c) Subsection 29a(16) of the said act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by striking out 'has not attained the age of 16 years or' in the first and second lines."

Mr. Chairman: There is a future for you as an auctioneer, Mr. Reville, after this.

Mr. Reville: I suppose having a future is better than none.

Mr. Chairman: I have always thought so.

Mr. Reville: Basically, this is technical and relates to other amendments that have already been explained ad nauseam, which is a Latin expression.

Ms. Hart: The government will be supporting it.

Motion agreed to.

Mr. Chairman: I have no other amendments to section 4. Yes, I do.

Mr. Reville: Yes, I have more.

Mr. Chairman: Actually, it is a section 4a, so why do we not take section 4, as amended, first?

Section 4, as amended, agreed to.

Mr. Chairman: Mr. Reville moves that the bill be amended by adding thereto the following section:

"4a. Section 30a of the said act, as enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 66 and amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following subsections.

"(1c) The attending physician of a person who is the subject of an application for assessment under section 9 or of an order under section 26 shall give or transmit to the person written notice of the application or order."

"1(d) A physician who applies to the review board for an order authorizing the giving of specified psychiatric and other related medical treatment to a patient shall give or transmit written notice of the application to the patient and to the area director for the area, in accordance with the Legal Aid Act, in which the psychiatric facility is located.

"1(e) The notices specified in subsections (1), (1b) and (1c), excluding the notice to the area director, shall inform the patient or person,

"(a) of the reasons for the detention; and

"(b) that he or she has the right to retain and instruct counsel without delay."

Mr. Reville: This amendment ensures that the patient may have the services of a rights adviser and obliges the doctor to notify the patient and legal aid of a pending treatment order application. In addition, it would implement the charter right to know the reasons for detention and the right to counsel. It is similar to rights that are extended in connection with orders for committal and competency decisions before the board. I think it makes the legislation more consistent in that regard.

Ms. Hart: We will be supporting that consistency.

Mr. Chairman: What a day of co-operation. I cannot believe it.

Motion agreed to.

Mr. Chairman: There is a new section 4b as well.

Mr. Reville moves that the bill be amended by adding thereto the following section:

"4b. (1) Subsection 31(2) of the said act is amended by adding at the commencement thereof "In addition to the applications under subsection 4."

"(2) section 31 of the said act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following subsection:

"(5) A waiver by an involuntary patient of an application or of the right to an application mentioned in subsection (4) is a nullity."

Mr. Reville: On every fourth certificate, you are entitled to a review of your civil commitment if you are indeed committed. This amendment ensures that review cannot be waived. I think it is appropriate that at least once annually there be a review of the certificate of committal. That is what this would provide for. You cannot waive it by signing some kind of piece of paper.

Ms. Hart: We will be supporting this amendment.

Motion agreed to.

Mr. Chairman: I see there are new subsections 4c and 4d that are being proposed.

Mr. Reville: And it is quite a long speech.

Mr. Chairman: Would you like somebody else to do it for you or are you up to it?

Mr. Reville: I am up to it. I had training in the Anglican Church.

Mr. Chairman: This is interesting. Perhaps we can discuss this later.

Ms. Hart: Much later.

Mr. Reville: I do not why you do not want to discuss this.

1720

Mr. Chairman: Mr. Reville moves that the bill be amended by adding thereto the following sections:

"4c. (1) Section 32 of the said act, as re-enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

"32. Except as provided in subsection 33f(1e), where an appeal is taken

against a certificate of involuntary admission or a certificate of renewal and the time period for the certificate under subsection 14(4) expires before a decision is rendered, the appeal shall be deemed to be abandoned whether or not the certificate is renewed.

"(2) Section 32a of the said act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

"32a. (1) On the hearing of an application, the review board shall promptly review the patient's status to determine whether or not the prerequisites set out in this act for admission as an involuntary patient continue to be met at the time of the hearing of the application.

"(2) The review board by order may confirm the patient's status as an involuntary patient if the review board determines that the prerequisites set out in this act for admission as an involuntary patient were met at the time of the hearing of the application.

"(3) The review board by order shall rescind the certificate if the review board determines that the prerequisites set out in this act for admission as an involuntary patient were not met at the time of the hearing of the application.

"(4) An order of the review board confirming or rescinding a certificate applies to the certificate of involuntary admission or the certificate of renewal in force immediately before the making of the order.

"4d. (1) Subsection 33f(1d) of the said act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by inserting after 'days' in the fifth line 'excluding Saturday and holidays.'

"(2) Subsection 33f(1f) of the said act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by striking out 'or' at the end of clause (b), by adding 'or' at the end of clause (c) and by adding thereto the following clause:

"(d) until the attending physician confirms under subsection (1k) that the patient does not meet the criteria set out in subsection 14(5).

"(3) Subsection 33f(1e) of the said act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

"(1e) Where, before a certificate of involuntary admission, a certificate of renewal or an extension of a certificate expires, a party to the appeal other than the patient or the person acting on the patient's behalf applies to the court for an extension of the certificate beyond the time period for the certificate under subsection 14(4), the court may by order extend the effectiveness of the certificate.

"(4) Section 33f of the said act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by adding thereto the following subsections:

"(1j) Where an appeal is taken from a decision of the review board to

confirm a certificate of involuntary admission or a certificate of renewal, the certificate is effective until,

"(a) the certificate is confirmed or rescinded by the court;

"(b) the certificate is rescinded by the attending physician;

"(c) forty-eight hours after notice is given to the attending physician that the party appealing has withdrawn the appeal; or

"(d) the attending physician confirms under subsection (1k) that the patient does not meet the criteria set out in subsection 14(5).

"(1k) Notwithstanding subsections (1) to (li), the attending physician shall examine the patient at the intervals that would have applied under section 14 and shall complete and file with the officer in charge a statement in writing as to whether or not the patient meets the criteria set out in subsection 14(5)."

That is self-explanatory, so I think we can just--

Mr. Allen: Do we vote on this or do we say amen?

Mr. Chairman: Would you like to highlight one or two of the important parts of this?

Mr. Reville: Basically, this is a technical amendment. However, members of the committee may recall that last December we made some changes to Bill 7. We believe the time is now appropriate to fine-tune some of those changes to deal with the status of a certificate of involuntary admission that may expire before a review board hearing or a court appeal occurs.

What has been happening is a rather perverse situation in which the review board or the court says, "The treatment order under which you applied has expired. Therefore, this is a nullity." It puts an onus on the patient complaining of the treatment order to apply to have a treatment order applied so that he can appeal therefrom.

You can see what a perverse and unfortunate effect the current law has, and that wonderful set of pages of little i's and little k's will correct all that, so that if you have appealed an order of the board, your treatment order is presumed to continue to be in effect so that you can have it dealt with and get your day in court, basically. I think that is probably the best explanation anyone here deserves.

Ms. Hart: The government will be supporting the fine-tuning.

Mr. Davis: I know you would like to conclude the bill by 6 p.m. I suggest that if the parliamentary assistant would only tell us the sections of the NDP motion that the government is going to support, we could just vote on them all now.

Mr. Chairman: But it is all happening so quickly. The interesting thing, of course, is that the Conservatives are supporting them as well. If you just tell me we have consensus on it all, we can all go home.

Mr. Davis: We are just not sure which ones the Liberals are supporting; that is all. It is just easier if they would let us know.

Mr. Reville: They will tell us.

Mr. Chairman: I am sure they will as we go through this. All those in favour of Mr. Reville's new sections 4c and 4d please indicate.

Motion agreed to.

On section 5:

Mr. Chairman: I have amendments; first, a government amendment. It is number 11 and is to section 35 of the act, if Mr. Reycraft is ready.

Mr. Reycraft: I move that section 35 of the act, as set forth in section 5 of the bill, be amended by adding thereto the following subsection:

(2a) Subclause 2(b)(iii) only authorizes the giving of such treatment as is necessary to preserve the life, a limb or a vital organ of the patient.

Mr. Chairman: Actually, I have made an error. There was no amendment to 35(1), so why do we not deal with that and then I will just accept the one you have already read. You do not have to read it again. All those in favour of subsection 35(1) standing as part of the bill? Carried.

We now have the amendment as presented by Mr. Reycraft, about to be explained by Ms. Hart.

Ms. Hart: The intent of this motion is to clarify the emergency treatment power. This definition, this wording, is taken directly from the hospital act. It limits emergency treatment so that it is only when it is necessary to preserve life, a limb or a vital organ of the patient.

Mr. Reville: I certainly support this but I must say that I have gone somewhat cross-eyed in the last moments. I have an amendment myself, except that I cannot quite figure out where it goes now. Can you? It is a nice amendment, too. I would hate to lose track of it. Ms. Hart's amendment is to 35(2a). I have an amendment to 35(2)(a).

Mr. Chairman: Yes, but yours is slightly before it actually, is it not? Let us stand down Mr. Reycraft's for the moment because yours is actually dealing with substance under--

Mr. Reville: I am certainly glad you are going to rectify this terrible omission.

Mr. Chairman: --(2)(a) proper, as it were.

Mr. Reville moves that clause 35(2)(a) of the act, as set out in section 5 of the bill, be amended by inserting after "without the" in the second line "voluntary, informed."

Mr. Reville: This is for greater certainty, to make explicit in the act the common law principle that consent to treatment of a competent patient must always be informed and voluntary.

Ms. Hart: The government will be supporting the amendment.

Mr. Reycraft: How will the clause read then, with the change?

Mr. Chairman: "...without the voluntary, informed consent of the patient" would be the last few words.

Mr. Reville: That is right.

1730

Mr. Chairman: So it will now read: "Where the patient has attained the age of 16 years and is mentally competent, without the voluntary informed consent of the patient," Everything else follows from that.

Mr. Reville: You will like it, Mr. Reycraft.

Mr. Chairman: Are we moving this age-16 element out of that, as well?

Mr. Reville: --that, automatically, when--

Mr. Chairman: Okay. All those in favour of Mr. Reville's motion, please indicate.

Motion agreed to.

Mr. Callahan: Voluntary informed?

Mr. Chairman: Voluntary informed? Now, we are back to--let me just be sure--

Mr. Reville: --it is subsection 35(2a).

Mr. Chairman: Yes. Okay. All in favour of Mr. Reycraft's motion, please indicate.

Motion agreed to.

Mr. Chairman: Let me see. If there is no further amendment to subsection 35(2a)--sorry, to section 35(2)--

Can I just be clear. Is Mr. Reycraft's motion titled properly? Should that actually read "section 5, subsection 35(2) of the act," and then you go down to deal with subsections 2a and subclause (2)(b)(iii)? Am I correct on that? I just want to be sure. There is no subsection 2a at the moment. There is only subsection 2.

Interjections.

Mr. Chairman: All right. Shall subsection 35(2), as amended, carry?

Mr. Reville: Just a second. I just want to ensure that clause 35(2)(b) gets the age-16 change.

Mr. Chairman: Yes. Shall subsection 35(2), as amended, carry?
Carried.

Do I now see amendments to subsection 35(3)?

Mr. Reville: Yes, I have one.

Mr. Chairman: Mr. Reville moves that subsection 35(3) of the act, as set out in section 5 of the bill, be struck out and the following substituted therefor:

"35(3) The consent to psychiatric and other related medical treatment,

(a) of an involuntary patient; or

(b) of a person authorized by this act to consent on behalf of the patient,

does not include and shall not be deemed to include psychosurgery."

Mr. Chairman: Okay, Mr. Reville, explain the difference to us.

Mr. Reville: The existing Mental Health Act indicates that psychosurgery, which I think is probably restricted to a frontal lobotomy, may not be forced on a patient. I believe this remains technically possible in Bill 190, as drafted. I want Bill 190 to be consistent with the Mental Health Act it seeks to amend.

Ms. Hart: We will be supporting this amendment.

Mr. Chairman: Thank you, Ms. Hart. Is there any discussion? If none, all those in favour of Mr. Reville's motion please indicate.

Motion agreed to.

Mr. Chairman: I have an amendment from the government to the next section--subsection 35(4). This is government motion number 12.

Mr. Reyecraft moves that subsection 35(4) of the act, as set forth in section 5 of the bill, be amended by striking out "and" at the end of clause (a) and by adding thereto the following clauses:

"(c) whether the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and

"(d) whether the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c)."

This is a matter we have already dealt with. All those in favour please indicate.

Motion agreed to.

Subsection 35(4), as amended, agreed to.

Mr. Chairman: Shall section 5 of the bill, as amended, carry? This is the entire group we have just dealt with, all the subsection 35 of the act. Shall that carry and stand as part of the bill? Carried.

Section 5, as amended, agreed to.

Mr. Chairman: All we have left, as I see it, is--We have all of this? I think we carried all that. Is there something still stood down on 35? I thought we went back and did that, actually. I guess we did. It was one of the first things to which we went back.

We have dealt with all of section 6 of the bill, which is 35a of the act essentially.

Mr. Reville: I wonder if the government would care to reopen motion number 18.

Ms. Hart: Yes, the government would like to reopen that motion.

On section 6:

Mr. Chairman: We are dealing now with section 6 of the bill, which is section 35c of the act. Mr. Reycraft moves to reopen. All those in favour, please indicate. Those opposed? It is reopened. Ms. Hart, what is the change?

Ms. Hart: In reading the amendment, we neglected to read the entire amendment. Would you like me to start from the beginning again, or how would you like me to do this? Perhaps I can read the whole thing.

Mr. Chairman: I think it might be wise at this stage, because what happened, as you may recall, was a change that was read out earlier on. Part of it has been left out. I think the easiest thing to deal with would be to just reintroduce the entire motion, so all members know what they are dealing with.

Mr. Reville: Then we could incorporate the amendments that have been made and clean it all up at once, which would be great.

Mr. Chairman: Ms. Hart moves that section 35c of the act as set forth in section 6 of the bill be amended by striking out "35a" in the first line and by adding thereto the following subsection:

(2) Section 35a applies with necessary modifications to a person where the review board is satisfied that the person

(a) who is remanded or detained in a psychiatric facility pursuant to the Criminal Code (Canada); and

(b) who, in the opinion of the attending physician, is suffering from mental disorder of a nature or quality that likely would result in,

(i) serious bodily harm to the person,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the person,

if the person did not remain in the custody of a psychiatric facility,

as if the person were an involuntary patient.

Mr. Reycraft: I note Mr. Reville is giving the thumbs up sign, but I think the amendment that was approved the first time we dealt with this was omitted when Ms. Hart read it into the record just a moment ago. Did we not

substitute in place of the word "to" in the second line after "to", "where the review board is satisfied that"?

Mr. Reville: She, in fact, read that into the record.

Mr. Chairman: It is now just slightly changed. It now reads as follows: "Section 35a applies with necessary modifications to a person where the review board is satisfied,"

"That the person" is what she read.

Mr. Tucker: That is correct.

Mr. Reville: I am satisfied with that, Mr. Reycraft, but I am glad you are being alert.

Mr. Reycraft: Always, Mr. Reville, always.

Mr. Chairman: All members are still awake and it is 5:40 p.m. I am very pleased. All those in favour, please indicate. Carried.

Section 6, as amended, agreed to.

Section 7 agreed to.

Section 8 agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: Thank you all very much. Incredible dispatch, a new legislative record, which I am sure confused the viewing audience no end, but there you go. You will be able to get copies of this through the government--

Mr. Reville: Next week, we will show you how to make hot dogs.

Mr. Chairman: I remember the joke.

I am passing out to members, through the clerk, what we think is the tentative agenda starting tomorrow for the Bill 80 hearings on heritage language.

Mr. Reycraft: On Thursday.

Mr. Chairman: Thank you very much, Mr. Reycraft. All of us are not awake. On Thursday, June 11, and following. If you have any problems with this or any matters you would like to raise with me, please do so after the adjournment.

Ms. Hart: Specifically it is a little late, but we do have that information about the psychiatric review board treatment orders, and we have copies for all members.

Mr. Chairman: The parliamentary assistant informs me that the information requested earlier about the psychiatric review board treatment orders is now available to us. It will be circulated to all members concerned.

We are adjourned until Thursday.

The committee adjourned at 5:41 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

EDUCATION AMENDMENT ACT

THURSDAY, JUNE 11, 1987

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitution:

Miller, G. I. (Haldimand-Norfolk L) for Mr. Cordiano

Clerk: Carrozza, F.

Witnesses:

From the Council of Ontario Communities:

Katsaitis, Dr. O., Communications Officer; President, Hellenic-Canadian
Federation of Ontario

From the Ontario Institute for Studies in Education:

Cummins, Dr. J., Professor, Modern Language Centre

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, June 11, 1987

The committee met at 4:25 p.m. in committee room 151.

EDUCATION AMENDMENT ACT
(continued)

Consideration of Bill 80, An Act to amend the Education Act.

The Vice-Chairman: I see a quorum of members in the committee room, so we may get ourselves under way with this historic set of hearings on the heritage language issue and on Bill 80 in particular. I remind members that you have some items the clerk has distributed for you. They should include a statement to the Legislature by the Minister of Education (Mr. Conway), a number of representations that have been made to the clerk's office and a copy of the ministry's proposal for action, Ontario Heritage Languages Program.

We will get our hearings under way. Professor Odysseus Katsaitis, will you identify yourself? Do you have any other persons coming forward with you or are you presenting on your own?

Dr. Katsaitis: I am presenting on my own.

The Vice-Chairman: Proceed in any way you wish. We will follow your presentation with questions and any further discussion that may arise out of your paper.

COUNCIL OF ONTARIO COMMUNITIES

Dr. Katsaitis: I am very pleased to be given the opportunity to come before you and share with you the Council of Ontario Communities' position regarding Bill 80. Before I speak on the issues relating to Bill 80, I would like to say a few words about the Council of Ontario Communities.

As some of you might know, the Council of Ontario Communities is an umbrella organization of approximately 30 groups whose purpose is to promote multiculturalism, facilitate the recognition of members of these groups as equal partners in Ontario society and to enhance teaching of heritage languages in the educational system of the province.

Also, I would like to add briefly that the council is disappointed by the government's recent yellow paper on the heritage language program. We feel betrayed by the manner in which the government has ignored, once again, the rights of Ontario's children. We expected a much more intelligent statement from the government, especially after the government's numerous consultations with the Council of Ontario Communities. Unfortunately, the government's position maintains the status quo and appeases only the administrators. There is nothing in it of substance for the people of this province.

As you are quite aware, approximately 40 per cent of the population of the province is not of English or French heritage. The needs of this substantial group are not currently effectively addressed by the educational system. Bill 80 provides the policy framework to effectively deal with the

linguistic and cultural development of the children of this province. Bill 80 is based upon two fundamental principles that we wholeheartedly endorse: First, the integration of all heritage languages into the school day, and second, the use of heritage languages other than English or French as languages of instruction.

I would like to mention that these principles were strongly endorsed by the present governing party when it was in opposition. It is our view that recognition of heritage languages as an integral part of the educational system enhances the cultural and linguistic richness of this province.

I would like to note for the committee's benefit that multilingual education is not a new phenomenon for Canada. Four provinces, Alberta, Saskatchewan, Manitoba and Quebec, have in place effective multilingual educational programs. It is also not new for Ontario. In this province, under the leadership of Eberton Ryerson, multilingual education was an integral part of our educational system.

The integration of the teaching of heritage languages within the regular school day can benefit both the child and society at large. Empirical research carried out in Canada and abroad has shown beyond doubt that knowledge of additional languages has beneficial effects on the cognitive and academic development of children. Moreover, the integrated heritage language program can play a key role in facilitating harmonious identification with the home and majority cultures by the students, which in turn will minimize, or should minimize, the possibility of academic problems due to cultural conflicts. This is the theory of cultural ambivalence of "do not want to spend too much time," and Dr. Cummins who follows can expand on these points.

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Research has shown that children benefit from the added linguistic dimensions of these bilingual and multilingual programs. Language is utilized as a medium of instruction in those programs and as a subject of instruction. The use of the language as a means of instruction helps children to maintain their heritage languages and enhances the development of their academic and cognitive skills. Again, there is voluminous research and, I am sure, Professor Cummins can give you thousands of references or at least hundreds of references. Research has also shown that parents and students respond positively to these programs. Therefore, parental involvement in the education of those children is enhanced.

The direct economic advantages to Canada of improving and maintaining the linguistic resources of the population are obvious, at least to an economist. It would be a national tragedy in our global village if we allowed this priceless resource to be lost because of the pressure that is put on our governments by groups that lack the foresight and wisdom to recognize the value of the linguistic resources already present in Canada.

To give an example of the benefits that can accrue from nurturing our linguistic resources, I give the following excerpt from the February 1985 issue of Canadian Business, where Donald Cox states:

"It should be obvious that any attempt to understand Japanese cultural and business practices without fluency in their language is doomed to failure....If Canada seriously thinks the Pacific Rim is where the economic action is, and where it will be, then we need to give our young people a

chance to share that action by giving them the opportunity to be fluent in the region's languages."

As the quote indicates, there is little doubt that effective heritage language programs result in better educated students who will be more productive members of the labour force. To put it differently, this quote or just common sense indicates that there is an investment dimension in the heritage language program. If we spend money today, we will get a return tomorrow. Consequently, as we are aware in looking at the budget, the proper way of evaluating the benefits of heritage language programs is by computing the cost of not offering these programs within the regular school system. One should ask the question: What will be the potential loss of output? What will be the potential loss of benefits--for example, lost trade opportunities--in the future if the students who could have taken this program do not take it?

I will give some examples later on. I think it would be useful to learn from the mistakes of our friends from south of the border regarding the waste of their linguistic resources. The following two excerpts from the President's Commission on Foreign Language and International Studies--it was in 1979--states quite clearly that the lack of foreign language competence of Americans resulted from:

"Faulty assessments--based on past rather than present and future needs--lead managers in government and private enterprises to underestimate the real need for expertise in those areas. The damage to America's competitive edge in international commerce and our repeated unpreparedness for events overseas that might have been anticipated, or met more effectively by more extensive research, illustrate the risks inherent in such penny wise and pound foolish attitudes."

The same report states further: "The President's commission believes that our lack of foreign language competence diminishes our capabilities in diplomacy, in foreign trade, and in citizen comprehension of the world in which we live and compete."

In a study submitted by the Hellenic-Canadian Federation of Ontario to the Minister of State for Multiculturalism, it was estimated that if only 2,000 students attending the heritage language program benefited from the program, in the sense of maintaining their heritage languages, the economic advantages to the province would run in the order of over \$220 million per year. This is what we, in economics, call the absolutely conservative lower bound. There is no way on earth that benefits could run lower than that. If you want, I can expand on that during the question period.

This point brings me to the issue of the costs of implementing Bill 80. The highest number that has been quoted so far has been \$30 million per year. This estimate has been produced by the Ontario Public School Trustees' Association and reported in the January 20, 1987, edition of the Toronto Star. I am sure and confident that the committee would agree with me that even if this number were accurate, although it appears to be inflated, the benefits would far outweigh the costs.

Actually, I am quite puzzled by the fact that when people are talking about heritage languages, some people think only of the cost. The same people who always come with economic benefits of various educational endeavours always forget, quite conveniently, to identify the benefits of the program. I

am not going to pick up a discussion in this room about cost-benefit analysis, although I could not be happier because that is the way I make a living.

Just to give you another example to put that \$30 million that made the headlines, or almost headlines, into perspective, the cost today of training a diplomat in Japanese or sending a civil servant from Ottawa to Japan for two years to be trained in Japanese is \$500,000. That is the estimate of the government of Canada. It would take just 60 diplomats to cover the cost of the program, even if this number were correct.

A number of perceived disadvantages of integrating the heritage language program within the regular school system and improving the linguistic abilities of our children have been raised. I would like to comment briefly on some of these issues.

Opponents of the integration of the heritage language program within the regular school system have argued that the program would result in the ghettoization of the school system. This is an unfortunate and erroneous conclusion, given the evidence to the contrary by existing programs. Bilingual programs in the western provinces have shown no indication of negative consequences. This is not a surprising result since these programs, as well as the integrated programs, coexist with other bilingual, monolingual and multilingual programs.

Moreover, our experiences with successful integrated programs in Ontario indicate that children of various backgrounds participate in the integrated programs. A case in point is the Orde Street School program in the Chinese heritage language, where 50 per cent of the students are of non-Chinese backgrounds. This is another fact that some people conveniently forget.

If there is any danger of ghettoization, it will come as a result of not providing an integrated heritage language program within the public school system. This will undoubtedly force groups out of pure desperation to establish their own private schools to maintain their languages. It is as simple as that. If the public school system cannot provide adequate support, it will have failed its mandate.

Another myth promoted by opponents of Bill 80 is that of language interference. The perceived dangers of the use of minority language to the successful development of linguistic skills in the majority language have been used as an argument against the maintenance of minority languages. This argument has been found to have no basis, as evidenced by research carried out over the last 20 years. As I stated earlier, if anything, the learning of additional languages enhances communication skills as well as the cognitive and academic development of children.

Another myth: Opponents of Bill 80 claim that mass layoffs and displacement of teachers will occur. Frankly, I find it appalling that people who are supposedly concerned about the education of our children would resort to such a distortion of the truth so that by way of creating mass hysteria they may achieve their goals. The implementation of an integrated heritage language program would follow an evolutionary process that would take place over a span of several years. Therefore, there will be no need for laying off teachers.

Opponents of Bill 80 also point to the lack of adequate curriculum and materials for use in the heritage language program. It is the case that we have faith in our education system's ability to meet such a challenge. We have

the expertise, the knowhow and, hopefully, enough common sense, which suggests that it would be prudent to move slowly in implementing fully an integrated program.

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I would like to assure the committee that all the resources of our communities will be available for this endeavour. I would like to stress in addition that although the implementation of heritage language teaching within the regular school system will happen by an evolutionary process, it is of the utmost importance that the present government show its commitment to multilingual education by acting quickly and embodying the principles of Bill 80 into legislation. The government must move expeditiously to ensure that the linguistic resources we are blessed with are not lost for ever.

Thank you for giving us this opportunity to appear before your committee to express to you the position of the Council of Ontario Communities. I will be happy to elaborate on the issues I have raised and to answer the committee's questions.

The Vice-Chairman: Thank you very much for your presentation, Professor Katsaitis. Are there questions from the committee?

Mr. G. I. Miller: Do you have any children going to school now?

Dr. Katsaitis: No, they will go in a few years.

Mr. G. I. Miller: Pardon me?

Dr. Katsaitis: They will go in a few years; not now.

Mr. G. I. Miller: Have they gone to our system?

Dr. Katsaitis: Not yet.

Mr. G. I. Miller: Are they still maintaining your own language?

Dr. Katsaitis: As a matter of fact, the young fellow is five months old and does not maintain any language yet.

Mr. G. I. Miller: So your family is not going to school yet. Is that what you are saying?

Dr. Katsaitis: That is right. However, if you want to ask a question about children and language, I was raised in an environment where five languages were used. My mother used five languages and my father used three or four. They were from Egypt. If that can be of any help as empirical evidence, I would be happy to provide it to you.

I hope that my child can--some of our friends speak English and some speak French. We have a few German friends. My wife can muster a little bit of German and I can muster a little bit of French. I hope the child will become multilingual by the age of 10, 12 or whatever.

Mr. G. I. Miller: The minister announced some changes. I noticed you were very critical of the ministry and what has taken place, but the minister

did make an announcement this past week that he is going to give some opportunity to educate in the language you like, depending on numbers.

Dr. Katsaitis: You mean the proposal for action.

Mr. G. I. Miller: Yes.

Dr. Katsaitis: Let me put it this way. Nobody would pick a quarrel about initiatives 2, 3, 4 and, I think, 5: effectively, what they do is put some order into existing practices: the issue of an incentive fund for student learning materials; incentive 4 is for gathering and sharing information related to successful practices in the languages program; the issue of personnel training. These practices already existed in the ministry. It is nice; one has to applaud the fact that we will put some order there, for example, about curriculum materials. It was not clear whether ministry personnel were allowed not to release funds for heritage language. Now it can be done.

Although these things are very important, they are, so to speak, of secondary importance to the fundamental issue, whether heritage languages are recognized as part of the curriculum. What initiative 1 quite effectively shows is the issue of the so-called Scarborough syndrome, which is irritating and insulting, but I for one do not think we have to elevate the issue with Scarborough to a national issue. It is an issue that has to be solved eventually; hopefully, through initiative 1, it will be solved.

To be honest with you, it is not clear to me how it will be, because the way initiative 1 is written in front of me, it is not clear that the existing Education Act will allow the ministry to interfere with the boards outside the five teaching hours, the usual five hours. Is the minister planning to amend the Education Act so he can give direction to the boards regarding continuing education but only with regard to heritage language?

Even initiative 1 is unclear and does not, I think, address the fundamental issue, namely, are we willing to recognize those languages, yes or no? Are we willing to be the only major province where multilingual educational programs do not exist?

It is absolutely clear that besides British Columbia--as I said to the Premier (Mr. Peterson) and to the Minister of Education (Mr. Conway), I am very happy we do not have a Social Credit government around--we are the only province without multilingual educational programs.

The reason for being critical is not that one would dare to pick a quarrel with initiatives to find which are basically administrative issues of sorting out the system within the ministry, but basically they do not address the fundamental issue, namely, the recognition of heritage languages. That is the reason for my stand.

Mr. Grande: First, let me thank Professor Katsaitis for a good brief, well presented and well researched. One could only wish the report the Minister of Education produced the other day were so researched. Unfortunately, it was not.

Let me ask you, first of all, Dr. Katsaitis, about the statement you make, "We feel betrayed by the manner in which the government has ignored once again the rights of Ontario children." That is a pretty strong statement. Would you like to expand in terms of that betrayal? I know that you mention numerous

consultations with the government. Would you be more specific for me please, if you can?

Dr. Katsaitis: Yes. The point is, first, one has to realize that the principles upon which Bill 80 are based were wholeheartedly endorsed by the governing party when it was in opposition. I am in a quandary. I understand very few things in life like power and money. I am not into philosophy. There were people who voted for this government on the grounds that Mr. Conway and Mr. Nixon stated very clearly and unambiguously, "We endorse these principles." That was in 1982 or 1983, right? It was not Bill 80; it had another number at that date. Well, that is fair enough.

Second, we spent an awful lot of time discussing it with the ministry, the Premier and the minister, and we are very grateful because we know their time is limited. We came with a number of concerns and points. Basically, all those discussions were dismissed in one paragraph on page 3 of the yellow paper. Basically, "Here in substance are the objectives"; in one paragraph, the whole issue of multilingual educational programs is dismissed.

It is more or less an insult, even if we were on the wrong side, if we did not come with a good point, for heaven's sake. It can be done or Alberta is wrong, Saskatchewan is wrong, Manitoba is wrong, Quebec--they should know something, those people.

We came with precisely those points and all of them were not dismissed. I will not pick up--if someone would tell me, "I don't like third languages," fair enough. Dr. Stephenson used to say that, and quite honestly, it was a fair position. The lady did not like it, fair enough. The voters made up their minds, at least. Now we have a situation whereby someone does not say so. We are picking up a discussion and then the staff, presumably following political directions, dismiss the whole issue.

If one looks at the staff of the ministry, in their technical reports--I am talking about the reports by Dr. Berryman and the report produced by Dr. Cummins, who can speak about it after me--when was that, 1983 or 1984, the review of the heritage language program?--they were providing support to our arguments for multilingual educational programs. It would be fully consistent with those initiatives and the whole issue was dismissed.

As I said to the assistant deputy minister, Duncan Green, the other day, "Would you not even have some respect for the money, the taxpayers' money you spent paying all those consultants for all the resources so that they were able to come with those reports in favour of multilingual educational programs?" The least I would expect from my government would be to give me the benefit of the doubt and discuss the proposals put forth.

Mr. Grande: Thank you very much, Dr. Katsaitis. Another question I have has to do with research. You state that you are an economist, so I will leave that for the people who are in research, at least in this particular area. I want to talk about the implementation of the program as it is spelled out in Bill 80. You suggest an implementation period. What do you have in mind?

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Dr. Katsaitis: Let me put it this way: I am not an educator. I think I have educated a few thousand children over my academic years but I am still not an educator. What I can see is that there is no way on earth that any responsible community will go out tomorrow and request that we have fully

integrated programs across the province in every language. I think it will take some time. For one reason or another, I am quite involved with a pan-Canadian committee for creating Greek-language textbooks within the Canadian reality. From what I have seen from those people who are associated with the Ontario Institute for Studies in Education--and they are as qualified, as experts, as they come--it takes approximately one to two years per school-year material per course.

What I would expect is that, conceivably, over the next two years, one can create curriculum material, say, for one course in one subject and take it slowly from there. Eventually, I suspect that after so many years things will accelerate because we will have more expertise in certain areas for certain languages. A good example would be Ukrainian. We have the curriculum materials from Manitoba, Saskatchewan and Alberta. That would be fairly easy to implement. If I were to speak for Greek, it would take much longer because we do not have materials now, except for language materials. It will be an issue that will take some years to be implemented.

Mr. Grande: It sounds reasonable to me. I have a further question. I have to give the opportunity to others to ask questions. If there is any time at the end, perhaps we can come around again.

One of the questions that seems to be on the lips of those people who tend to oppose multilingual education, as you put it, is the cost. They talk about the costs and say the teachers are not available. It will take time for teachers to be available to teach these classes.

I am aware that some research--I will avail committee members of a copy of this if they so wish--that says the operational costs of partial immersion programs are less expensive than for present core heritage language programs being offered in Ontario and Quebec. I think the researcher made a mistake because there are no core programs in Ontario. However, there are core programs in Quebec. The point is that the costs of the immersion programs are less than the cost of teaching the subject as opposed to teaching bilingual education.

Therefore, it puzzles me that you seem to talk about the fact that there may be teacher displacement. I do not understand where that occurs for the simple reason that I think this will be an added function of the education system. Therefore, I would think we would need teachers added to the system, as opposed to a diminution of teachers in the system. How do you react to that?

Dr. Katsaitis: I could not agree more. Three points: I would not be able to comment on the relative costs between core programs versus immersion. I am not an expert. I can come back with a general statement. I think in the universities too many students of economics have failed on the grounds that they dared to write in an exam that this is the cost of the program. It is a meaningless notion. We never say it costs \$100 million to run a university. This committee is the one that approves the money for the universities, I suspect, and goes through the budget and spends quite a few billion dollars. We do not say we do not have enough money. We say there are so many benefits on the other side. The notion of the cost as a notion on its own is meaningless; it is the cost relative to some benefits. That is the first point.

About the teacher issue, the adjustment, I could not agree more. First of all, we will definitely need more teachers with linguistic abilities. That

will be over and above the existing needs. If anything, it should create, as economists would say, some excess demands on the system.

To the argument of what is going to happen to teachers, "Where are we going to find them?" I say we will find them the way we found teachers for our French-immersion programs. The same arguments were used 15 or 20 years ago when Ontario was moving into French immersion. If there is a market, people will move in. It is a well-established law in our economy. If there is a demand, people with linguistic abilities, rather than becoming whatever--lawyers, economists or what have you--will simply become teachers. They will have a chance to use their talents and their interests.

The argument about mass layoffs and displacement will not make any sense because why should we need fewer teachers? We will need considerably more teachers. Even if we were to move to too many courses that would be in other languages, it would take so long and so few teachers would be affected that it is simply a complete distortion of the truth. It will not hold water.

The Vice-Chairman: We will move along now. Mr. Jackson, you are next on our roster.

Mr. Jackson: Professor Katsaitis, could you please expand on the statement you make on page 1 with respect to "the government has ignored once again the rights of Ontario's children." Could you put that a little more clearly in context for me? Which rights?

Dr. Katsaitis: Where is that?

Mr. Jackson: In the second paragraph on page 1 of your brief.

Dr. Katsaitis: "We feel betrayed by the manner in which the government has ignored once again the rights of Ontario's children." I think linguistic rights are a fundamental part of the whole package of what rights are all about. I think children have every right to learn their heritage languages hand-in-hand with all the other courses and all other school material. The government simply ignored the issue of discussing this proposal, the possibility that those rights will be respected.

Mr. Jackson: You are not referring specifically to a charter right.

Dr. Katsaitis: Not necessarily. I would not like to pick up a discussion on the legal aspects. It would be interesting to have a look at that. Maybe one of the other people who will make a presentation to you might wish to pick up the discussion of that.

Mr. Jackson: Thank you.

Mr. Reycraft: Professor Katsaitis, one of the contentions of your submission is the fact that somehow Ontario is doing less in heritage language instruction than other provinces in this country. Knowing there are now 58 heritage languages in the province, is it your view that Bill 80 should apply equally to all 58 languages?

Dr. Katsaitis: As I said, somewhere there is something called common sense. I strongly believe--all economists believe--that common sense is as common as commonly believed. There are times it cannot be done. One can say it is not as common as economists believe and go the other way. No, there are times it cannot be done. I think it is an issue of common sense. There will be

schools and groups involved where it simply would not be possible, and even if possible, it would not be optimal to integrate the program within the regular school day. There is no issue. I am on record with a statement. You can think of cases where you might have 20 children and it still might not be optimal, from an educational point of view because of the variety of their backgrounds or what have you. The principle of Bill 80 is that this option should be available.

It is a fundamental principle of economics that nobody can be worse off by expanding the feasibility set, what is feasible or what can be done. However, the notion that there are somewhere three children or 20 children and therefore we immediately have to operate an integrated program does not necessarily make sense. Maybe we do not have the materials for this language today. Maybe we should go with an afternoon class for a year or a couple of years and slowly and steadily move into an integrated program. Or we do not have the personnel at this specific point.

The point is, this is an implementation question. In order to address those questions we should have the legislation saying this can be done. Then we can see whether it can be done and how it should be done.

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Mr. Reycraft: I do not think it is very reasonable to expect a government to proceed with an initiative until it is satisfied and confident that something can be done. You are saying we should adopt the principle first and then move to deal with implementation and look at the practicalities afterwards.

To go back to the example you used of the other provinces, are you aware of the number of heritage languages being taught in the other provinces that do offer such programs?

Dr. Katsaitis: I am sorry?

Mr. Reycraft: Are you aware of the number of heritage languages being taught in other jurisdictions, in other provinces, that provide heritage language programs?

Dr. Katsaitis: Yes.

Mr. Reycraft: Is it not true that the maximum number taught in any province is six?

Dr. Katsaitis: But here there is an issue: How many ethnic groups, how many ethno-linguistic groups, are in those provinces, and what is their interest in sending their children into those schools?

Mr. Reycraft: Are you suggesting it is no more difficult to implement a heritage language program for a jurisdiction in which there are 58 different heritage languages than to do it in one where there are only six?

Dr. Katsaitis: No, what I am saying is--I am sorry, let me see if I follow your question. Your question is how, if we have 58 and in Manitoba or somewhere else they have only six or seven offered by the ministry? Am I right?

Mr. Reycraft: I am really trying to put forward the case that it is not terribly relevant to say that we in Ontario, given the number of heritage

languages we have, should be able to do what is being done in Alberta, where they teach only one heritage language, I believe.

Dr. Katsaitis: Actually, two or three: Ukrainian, Hebrew and German are the three I can think of, at least.

Mr. Reyecraft: Three? Okay.

Dr. Katsaitis: At least that I can think of, in an integrated fashion, yes. But what makes you believe that, tomorrow, 58 groups will request, will demand, 58 languages?

Mr. Reyecraft: Experience.

Dr. Katsaitis: Yes and no, if I may say so, because one can put in place an implementation committee. Certain things are feasible and certain things are not feasible. It is as simple as that, and one should be aware of the limitations.

I think it is the same thing with French immersion. French immersion is not available in every little corner of this province. There are some tradeoffs, right? Occasionally there is too much demand and you say, "I am sorry. You have to go to the school next door," or "You cannot use it" or what have you. I think there are tradeoffs every day in our economic system, and I think we recognize there are tradeoffs and there are limits.

Nothing makes me believe there will be a tremendous demand for 58 immediately. Eventually it might appear, but then again, I cannot see why the system cannot cope with it if, after 15 or 20 years, all 58 groups make requests. Why should you not have enough faith in the system?

Mr. Reyecraft: We are teaching 58 heritage languages now in this province. Why would you assume we would not teach all 58 with--

Dr. Katsaitis: If we can manage it in the afternoons, then I see no reason we should not do it slowly but steadily in the mornings, in the integrated fashion.

Mr. Reyecraft: Thank you.

Mr. Davis: In your brief, you were talking about the heritage language being a language of instruction. Envisioning that it is incorporated in the day program, do you see it as the language of instruction in one subject, all subjects, and what happens to the students with respect to their acquisition of English and French?

Dr. Katsaitis: First of all, one can go only by what happens in other provinces, what we see in Manitoba, Saskatchewan, Alberta, or what happens in the United States. The practice is that a few subjects might be taught in a third language.

Mr. Davis: What do you want? Tell me what you want.

Dr. Katsaitis: What I want is to be sure the children will be able to learn their heritage languages. What is the number of hours I would like to see? It depends upon the curriculum materials available and it depends upon what the educators are going to say.

I will come to the second question, which answers the first one. All the empirical research, including research funded by the Ministry of Education, shows that there is no problem of picking up the other language for children who are taught in one language. The best example, I think, is the French immersion program--those who speak perfect English. There is no doubt that this should not be a problem--the ability of picking up the English language. In any case, in practise, I think in Manitoba 50 per cent, at most, of the school year will be spent in one language. It is not an issue.

Mr. Davis: But those who are critical of Mr. Grande's bill, one of the questions they ask is one that we need at least some direction on. The impression left by Mr. Grande's bill is that students from the ethnic communities would take their language of instruction totally in the heritage language. Now, you are saying, "Well, it might be 50 per cent." What I am trying to do is get some impression of what you think would be of benefit. Let us say, for example, we are using Greek. Would they take five subjects in Greek, two in English and one in French? Would you be asking for change in the curriculum so the student could select the heritage language, rather than French? I just need some clarification, that is all.

Dr. Katsaitis: First of all, with all due respect, Bill 80--the case where all subjects will be taught in the third language--refers only to the transitional programs. That is my understanding of Bill 80--use a third language only for a transitional level.

Mr. Davis: That is being done now.

Dr. Katsaitis: So it is done and you have no problem. Those programs have been evaluated and assessed. I think everybody is quite happy. The city of Toronto has used it for years. They have no problems. So 100 per cent third language is strictly for transitional purposes.

Now, how much time does one spend in the other language? It will depend on the interest of the students and on expert advice, which I am not in a position to give. I would say just a few hours. In Europe, it is very common, especially for the upper social classes, to send their children to another country. They do not miss their language. If someone asked me that question--again I am in a corner because I am a practical man--I would say, "Let us have a look at what happens in Alberta, Manitoba, Saskatchewan and California." I think in Alberta they spend up to 50 per cent of the time in the third language. The evaluation of the program indicates very clearly that their students, if anything, do better in English.

Mr. Davis: Can you help me? Is French mandated in Alberta?

Dr. Katsaitis: I think they take some French in those schools. If it is a mandate, I am not sure.

The Vice-Chairman: Yes, as a subject of instruction. I am not sure what grade level it begins at, but it does begin.

Mr. Davis: I am trying to come to grips with the third-language instruction, how we work it, and the percentages that your community and other communities may want, understanding that we have a mandatory statement now in the Education Act which requires a certain amount of French.

Dr. Katsaitis: Yes?

Mr. Davis: I guess I am asking, would you still want to keep French as part of the process, so the youngster could be doing French, English and Greek, for example?

Dr. Katsaitis: They are doing it in any case. If you look at the educational programs of most European countries--Germany, France, Italy--I can recall my days in Greece--a third language would be the standard way. If you were going to private schools, you would be doing 30 per cent of your time in English, 40 per cent in French and 30 per cent in Greek, on the grounds that you would speak your language at home or elsewhere.

Mr. Davis: Just briefly, my second question--

The Vice-Chairman: Mr. Davis, I hope it is brief.

Mr. Davis: Yes, it is brief.

In initiative 4 of the guidelines from the Ministry of Education refers to provision of funding and names a consortium of school boards, then it moves into ethnocultural organizations, provincial associations, publishers and so on, in respect to the production of material. Are you happy with that, or would you rather see those funds going to the educational family to produce the material that will be taught in the classroom?

Dr. Katsaitis: You mean directly by the boards?

Mr. Davis: Yes, consulting with the community.

Dr. Katsaitis: I think the way we produce educational materials for the standard school works fine. Some of the funds go to the boards, some are distributed from the ministry to various people, universities, or what have you. I think we can follow the same format. It has worked for years.

The Vice-Chairman: I think that exhausts our time. Thank you very much, Professor Katsaitis, for coming before us this afternoon.

I would ask Professor Jim Cummins, from the Ontario Institute for Studies in Education to come forward.

The members have a brief that has been circulated. If they would care to refer to it, you may proceed with that brief, in whatever fashion you prefer, Professor Cummins.

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ONTARIO INSTITUTE FOR STUDIES IN EDUCATION

Dr. Cummins: To many of us involved with the education of minority students in Ontario over the last 10 to 15 years, there is a sense of déjà vu in relation to these hearings. The fundamental issue has changed very little since April 1972 when Tony Grande, then a teacher with the Toronto Board of Education, first proposed an Italian-English bilingual program.

The issue is not simply one of the educational benefits or otherwise of language teaching, although this is an important consideration. The more fundamental issue is to what extent the basic structures of our educational system have changed to allow ethnolinguistic communities to participate fully as partners in the education of their children. Or, expressed differently, to

what extent do our much-vaunted multicultural programs merely represent a façade that simply obscures the lack of any real shift away from educational structures that exclude ethnolinguistic communities and are inherently discriminatory towards minority children?

Let me first, briefly, put the issue into historical perspective, then I will summarize the research on heritage language programs and other relevant research related to the rationale for including heritage language teaching within the regular school system. Finally, I will examine the policy issues.

Essentially, we are faced with two very different policy scenarios: the one where we continue to hide behind the rhetoric of multicultural education in order to avoid addressing the issue of institutionalized discrimination in our schools, as we have done over the last 15 years; the second scenario is one to which the present government has, at least on paper, committed itself, and it involves implementing anti-racist education programs in which teachers and communities become partners in encouraging all children to express and share, and thereby amplify, their experience within the classroom. This kind of partnership is impossible in a school system that tells parents and children to leave their languages at the gate, and where teachers encourage children not to use their languages within the school.

First, let me look at the historical perspective. Essentially, what I want to try to do here is give a broader perspective on the issue of implementing heritage language teaching within the regular schools. I am going to suggest other considerations that are important with respect to the way in which schools relate to communities, and which can be addressed, I believe, through the incorporation of resource people who speak children's languages within the school system.

When we look at the historical perspective, the rationale for incorporating children's languages within the regular school system was well expressed in the draft report of the Toronto Board of Education's work group on multiculturalism, whose report was issued in May 1975:

"The shocking recognition for the board of education for the city of Toronto is that within the space of a decade its cultural base has become incompatible with the cultural base of the society which supports its endeavour."

This report recommended, among other things, that the Ministry of Education be requested to amend the Ontario Education Act to allow languages other than English or French to be taught within the school system. As we know, by virtue of the fact that we are sitting here today, this has not happened. Due to the ministry's unwillingness to change the Education Act and the strong backlash against giving in to "ethnic demands," the work group's final report withdrew the recommendation regarding teaching students' language. One of the major arguments used at that time was that teaching of heritage languages was educationally ill-advised because it would impede children's acquisition of English.

This argument was also prominent in subsequent debates in 1977 and 1982-83, despite the fact that research had overwhelmingly demonstrated that the development of bilingual and biliteracy skills was educationally enriching to children, no less for minority children than for majority children in French immersion programs. One might judge the progress, or the lack of it, that has been made during the past decade in realigning the cultural base of our schools, as recommended in the 1975 work group report, from the fact that

within the past year the Toronto board has disbanded its school-community relations department and relieved its co-ordinator of his duties "because of the unavailability of work." This is in a city with more than 50 per cent of the children from non-English-speaking backgrounds. One of the crimes of the school-community relations department was to have informed ethnolinguistic communities of research findings regarding the educational advantages of bilingual development, a message that was the opposite to that being conveyed to parents and children by many teachers.

I have summarized the research basis for heritage languages teaching in the report I did for the ministry some years ago and the abstract of that is attached to this submission. Virtually no research is available on the effects of teaching the language as a subject within the regular school system because such programs do not exist in Ontario and have not been researched in Manitoba or Quebec, where they do exist.

However, program evaluations from Europe, Canada and the United States consistently show that the use of a minority language for all or part of the school day entails no long-term loss in the development of skills in the majority language. In fact, the opposite appears to be the case for minority children who are educationally at risk; in other words, those from groups that tend to experience academic failure.

Bilingual programs that build up a conceptual foundation in the children's mother tongue result in significantly better academic performance in English. Let me give you a recent example that comes from a large-scale evaluation being conducted in the United States, involving about 4,000 students. This is a study funded by the US Department of Education.

This study reported that kindergarten and grade 1 minority students in English immersion programs--in other words, programs similar to what we have here in that all instruction is given in English--fared much more poorly than equivalent students in bilingual programs that used children's mother tongue for about two thirds of the day. There was an inverse relationship between the amount of English that students received and their performance in English and in other academic subjects.

What appears to be happening here, and it has been shown in many other studies, is that the mother tongue support the children get builds up a conceptual foundation that allows them to internalize and assimilate the academic content they are getting in English.

Other studies have shown the same pattern. For example, a large-scale five-year study funded by the Social Sciences and Humanities Research Council, called the Development of Bilingual Proficiency, which was recently concluded at the Modern Language Centre at the Ontario Institute for Studies in Education, reported that among grade 7 Portuguese-background students in Toronto, English academic skills were strongly related to how well students' Portuguese academic skills were developed.

Let me give you a concrete example to put some flesh on these research statistics. It is an incident that took place several years ago in a school with an integrated-extended Chinese heritage language program. Because a recently arrived grade 1 student was experiencing difficulty in grasping certain concepts in math, the regular program teacher felt that he should spend time working on math rather than attend a heritage language program. This upset the child considerably, because the heritage language program was probably the one time during the school day when he could understand what was

going on, and after the heritage language teacher intervened, the regular teacher agreed to let the child attend.

During the class, the heritage language teacher was able to spend a few minutes with the child to explain the math concepts in Chinese. Afterwards, the child understood them. The difficulty was with the language rather than the concepts themselves, and the difference in terms of children's development is the difference between academic success and academic failure, in many cases.

Another clear trend to emerge from the research is that incorporation of heritage language teaching within the regular school program, for example, in transition programs, encourages minority parents' involvement in their children's schooling, for the obvious reason that there is somebody in the school who speaks their language.

The broader implications of this can be seen from the findings of a needs analysis conducted some years ago by Anne Keeton Wilson of OISE in a large urban school district in Ontario. The dominant theme to emerge was of poor communication between educators and parents. Parents often felt the school system excluded their children from educational opportunities and discriminated against their economic, social and cultural characteristics, while teachers blamed parents for lack of involvement and interest in their children and for poor parenting skills. The picture one gets is of two solitudes.

It is not difficult to see why communication breaks down when there is often no common language between communities and schools. Inclusion of heritage language teaching as a legitimate educational activity provides not only an enrichment opportunity for all children but also resource persons within the school to facilitate communication between school and community.

The potential role of the heritage language teacher as a resource person for the entire school becomes even more significant when we broaden the context to examine the issue of psychological assessment of minority students. Bill 82, the special education legislation in Ontario, mandates that all students be screened to determine whether they have special learning needs. Children who are suspected of having some kind of exceptionality--for example, a learning disability--are usually referred for psychological examination and, as part of this process, given an IQ test. This is usually the Wechsler Intelligence Scale for Children.

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Study after study in both Canada and the United States has documented the enormous cultural and linguistic bias in the verbal scale of this test. For example, in a study I conducted in western Canada involving more than 400 assessments of minority students, on the information subtest of this IQ test--this is a subtest that attempts to assess what children have learned as a result of their experiences to this point--more than 70 per cent of the minority students obtained a scale score of six or below, compared to only 16 per cent of the test norming sample; 34 per cent, more than a third, of the minority sample scored three or below, compared to only 2.5 per cent of the test norming sample.

Despite the fact that the research data show that this type of verbal test seriously underestimates minority children's academic potential until they have been learning English for at least five years, universities are still training psychologists to administer IQ tests with only lipservice paid to the

fact that tests such as the Wechsler Scale discriminate against the majority of children to whom they are likely to be administered in a city like Toronto.

What has this to do with the incorporation of heritage languages teaching within the regular school day? Two things: First, having a resource person in the school who can interview the child and his or her parents in their home language provides additional information to the psychologist in making a clinical judgement about what the child's learning needs may be. It also facilitates communication to parents of what concrete strategies they can implement in the home to help their child.

Second, at a more fundamental level, both the question of legitimizing the teaching of heritage languages within the regular school day and the question of discriminatory testing of minority students are manifestations of the same basic issue: To what extent have we in Ontario over the past 15 years evaded rather than confronted institutionalized racism in the educational system? There is evidence that in both these areas the strategy during the past 15 years has been to evade awkward issues, where possible, rather than resolve them.

Lorne Lind, for example, whose 1974 book *The Learning Machine* documented the initial debates in Toronto on heritage languages programs, described the Ministry of Education at the time as "without clear policy, except to unbend as little as necessary to avoid confrontation."

The desire to avoid confrontation is also evident in the current ministry's policy document on heritage language teaching. Although the document contains important initiatives, it fails to advocate including heritage languages within the regular school day. In a similar way, when Bill 82 was introduced, it was modelled in virtually all respects on the previous American legislation dealing with special education, public law 94-142, with one major exception. The strong provisions against linguistically and culturally biased testing of minority students contained in the American legislation were totally omitted from the Ontario legislation and, except for vague cautions, from supporting documentation. Again, it was more convenient to ignore rather than to deal with the issue. But these issues do not disappear; they just fester underneath the surface.

To conclude, I have tried to place the issue of heritage language teaching within the regular school day within a broader context of the extent to which our educational systems are structured to exclude rather than encourage genuine minority community participation. Within this context, there are three primary considerations:

First, research shows clearly that promotion of heritage languages development among minority children is educationally advantageous, and particularly so for those minority groups that appear to be at risk in our school systems;

Second, research suggests that relations between schools and ethnolinguistic communities are often strained, with minimal understanding on either side of the other's perspective. Heritage language teachers as resource persons within the school potentially provide a link to the community and can help establish a relationship of a two-way partnership in a shared educational enterprise.

Third, although current initiatives in race relations policy in Ontario will hopefully address the issues, Ontario does not have a happy record during

the past decade with respect to addressing the question of children's rights being violated as a result of biased psychological testing. Heritage language teachers as resource persons within the school can play an important role by providing psychoeducational consultants with information about the child's first-language abilities and language use in the home. This is the side of the coin that psychoeducational consultants, despite their commitment and good intentions, are currently not able to take into account in arriving at clinical judgements.

These multiple roles for heritage language teachers in realigning the school system to make its cultural base compatible with that of the community obviously imply a somewhat broader framework than that within which Bill 80 has been developed. The framework explicitly incorporates the position that children's rights to an education that truly develops their potential are violated when their languages are left at the school gates, children's rights to a nonbiased assessment of their academic abilities are in jeopardy when only half their linguistic repertoire is assessed, and their parents' rights to participate meaningfully as partners in their children's education are ignored when nobody in the school is capable of communicating in the parents' language.

I would urge the committee to take this broader framework into consideration in considering the relationship between Bill 80 and children's educational rights.

Mr. Grande: Dr. Cummins, thank you very much.

With respect, we are not researchers here. I am sorry, I do not mean that to imply in any way--I would like to find out, in terms of the research basis for heritage language teaching, are you saying that kids who learn in another language other than the dominant language, that is, if you taught Portuguese children in Portuguese as opposed to teaching them in English right away, those children that you taught in Portuguese will learn English better?

Dr. Cummins: When you look at the research findings on the effects of bilingual programs for minority students, the first thing that is obvious from all education contexts is that there are large differences among groups in their educational achievement, whether in bilingual programs or in programs conducted entirely in the school language. Some groups tend to do much better than others.

What has been very clearly established, I believe, is that for groups that are at risk educationally, in other words the groups that are doing poorly when they are submersed in English, the reinforcement of their first language, reinforcement of their conceptual base in that language, provides a much better foundation for acquiring academic skills in English. Study after study has shown an inverse relationship between the amount of English these children receive in the early years of school and the achievement they attain in English.

If you take, say, Portuguese children, who do tend to achieve very poorly in our schools in this city, certainly there is quite a bit of evidence to suggest that would be a reasonable and appropriate strategy to address those needs.

Mr. Reycraft: Supplementary on that point, could you tell me how

long those studies are? How long were those children followed to determine there was that inverse relationship you have just spoken of?

Dr. Cummins: The studies have varied, but there are quite a few studies that have followed children right through the elementary school period until grade 6, grade 7, grade 8; I can give you specific details of studies if you want to pursue it further. But there is a large amount of data showing that children who are achieving poorly in school, for example, Hispanic students in the United States, achieve considerably better results when there is a strong reinforcement of the first language in the early stages of school.

If I can just elaborate a little bit on that, the reason this appears to be the case is that many of the children who are failing academically in our schools have a strong sense of ambivalence about the value of their own cultural background vis-à-vis the majority culture. There tends to be a denial of the value of the home language and a tendency to replace that fairly quickly.

What teaching through the mother tongue in the early stages appears to do is not just provide instruction that is more meaningful to students but also reinforce their sense of pride in their own identity.

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Mr. Reycraft: Those results in the short term do not surprise me at all. I am interested to know more about the longer term.

Dr. Cummins: The longer term shows that those children who are in bilingual programs where their first language is reinforced develop bilingual and biliteracy skills. In other words, they experience the same kinds of educational benefits of biliteracy that children in French-immersion programs experience. They become educationally enriched, if you like, in comparison to the typical patterns they develop in English-only programs, where their first language is replaced by English. They certainly do not suffer in terms of English academic development. In fact, the data show there are some subtle educational or cognitive advantages as a result of acquiring well-developed skills in both languages. Children seem to be more sensitive to language. They analyse it more deeply. They are able to do more with language, because they have a better conception of how language maps on to realities.

Mr. Grande: If I may continue, you are saying that as a result of bilingual education, if you like, or the use of the heritage language in core subjects or as a language of instruction, you produce better students.

Dr. Cummins: If I can be very specific here, because I think it is important to know exactly what the research is saying, there are no data directly relating to core heritage language programs, the same as there are minimal data relating to core French-as-a-second-language programs. What I am saying is that children's English-language academic skills are directly related to how well their first-language academic skills are developed.

For example, a child who is in a bilingual program, let us say the kind of programs they have out in Alberta where Ukrainian, German, Chinese or Arabic is a language of instruction, to the extent that these programs are successful in promoting children's development of literacy in their first language, there is a transfer or a crossover to English. English skills not

only do not suffer, they tend to be enriched as a result of the better conception the children have of what language is all about.

In terms of direct data on core programs, it would depend on how good those programs are and the extent to which they actually succeed in developing children's first-language skills. The school climate is obviously going to be important too. If those programs are implemented in a poisoned school climate, they are likely to have negative rather than positive effects.

Mr. Callahan: If I understand you correctly, then I have to ask this question. Let us say a child is enrolled in French immersion. Are you saying it follows as well that someone who is enrolled in French immersion whose first language is English is not going to learn as well?

Dr. Cummins: No. The data are quite consistent. Essentially what I am saying is that instruction through a minority language--for example, French in a French immersion program or Portuguese in a Portuguese-English bilingual program--entails no loss in the development of children's skills in the majority language. The majority language is reinforced in the entire society, so children very quickly transfer skills to the majority language.

If you take the example of minority French programs for Franco-Ontarian students, where French is used as the major language of instruction, these children have better skills in English at the end of elementary school, despite the fact that French is used for about 80 per cent of the school day, because of the power of English in the environment.

The Vice-Chairman: If I can perhaps comment here, there is a psychological difference between starting with an immersion program from a majority-language base and beginning it from a minority-language base. As I understand Professor Cummins, the majority language reinforces itself all the time. You come out of a majority-language home, you go into French, which is a minority second-language immersion program, and you have a different situation, qualitatively, than when a Portuguese student, who is a minority language student in a majority culture, goes into an English language, majority language situation and has his own home language suppressed in the process. If I hear you correctly, there is a psychological difference from the starting points of children going into those two different kinds of immersion patterns.

Mr. Callahan: I got the impression from reading your brief that what you were saying, and it seems to make sense, was that a person learns best in his own language. It is easier to teach concepts to them and so on. I think you gave examples of a couple of instances like that, or for instance, even in the learning disability situation, in terms of dealing with a test that is written in a language other than their own, they will do badly.

I still do not understand; maybe it is a very subtle point. If I enrolled my child in a French immersion program where all the subjects were taught in French, if that statement is correct, then why--maybe I am missing the point. I cannot believe that if it applies to that, it would not apply to the child who is in French immersion, that he would not have difficulty in grasping the concepts of every subject that was taught to him in French.

Dr. Cummins: Let me try to give you a concrete example to illustrate the difference between the two situations. It is very much along the lines of what Mr. Allen has said. If you think of a child in a French immersion program, and probably many people in this room have had children or have

children in French immersion programs, in the kindergarten stage of those programs, all the children are literally in the same boat. None of them knows any French, so the teacher can tune his or her instruction to the level of the linguistic competence or incompetence of the children.

A lot of the communication is reinforced through paraphrasing, through repetition, through gestures and children are given enormous reinforcement for any learning they do. They get tremendous reinforcement for any understanding that they gain of French in the early stages, any use of French, so what is communicated to them in that situation is their success, the fact that they are special people learning in this special program, and the instruction is such that it does not interfere with their normal communication in English outside the classroom.

If you contrast that with the situation of, let us say, a Portuguese child who is in a situation where he or she is mixed in with a variety of children from other language groups and native English speakers, where the teacher has had minimal training to deal with that situation, you have a situation where very often teachers will develop negative expectations of the child.

There was a study done a number of years ago in the North York Board of Education which showed that teachers felt that twice as many English-as-a-second-language students were likely to have academic problems as students who were not from ESL backgrounds. In other words, there is a tendency, because the child does not speak English, to view the child as potentially having some problems. If the child does not very quickly acquire English, the child is regarded as having some kind of academic difficulty. What is communicated to the child in that situation is the problematic nature of his or her entire learning situation and the fact that his language is not something that is okay to use in the school.

In the immersion situation, the children are quite free in the kindergarten stage to use English among themselves. They use English with the teacher and the teacher can understand them and respond appropriately. In the situation of the Portuguese student, the teacher does not understand Portuguese, so you have this gap between the two situations. The situations are not parallel.

Mr. Callahan: Just one further question, if I might: If you took a child who came from a French-speaking family and put that child in French immersion, would that situation exist?

Dr. Cummins: For a child from a French-speaking family in a French immersion program, I think it would be a very worthwhile situation for the child to be in because that child's minority language is being reinforced in the school and the child has the knowledge that other children, children from the dominant group, from the prestigious group, are learning his or her language. The sense of ambivalence that many minority students feel would be addressed in that situation. I think it would be a very useful situation for minority francophone students to be in. That is the whole rationale behind having francophone programs.

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The Vice-Chairman: Mr. Grande, are you continuing with your questioning?

Mr. Grande: I have allowed supplementaries. If you do not mind, I have a few more questions.

Dr. Cummins, you are, as I understand it, probably one of the few experts we have in the nation in regard to second language acquisition. There is the work you have done for the Ministry of Education in, I believe, 1983 or a few years back in terms of the western provinces. Dr. Shapiro, the present Deputy Minister of Education, did his report on the commission on private schools in Ontario. One of his recommendations in that report, recommendation 75, was: "That the Education Act be amended to permit school boards to authorize the use in a school of one language other than English or French, as a language of instruction for not more than the number of regular school hours devoted to the second official language." At that particular time, did Dr. Shapiro involve you or others in terms of research background in coming up with that kind of recommendation?

Dr. Cummins: As you know, Dr. Shapiro was director of the Ontario Institute for Studies in Education at that time. I think he was quite familiar with the research my colleagues and I had done in the Modern Language Centre on evaluations of bilingual programs in Ontario and elsewhere, even though, to my knowledge, he did not sit down and consult directly with any of us on that point, it obviously reflects what I have been saying with respect to what the research literature is saying.

Mr. Grande: The next is from one who is now a doctor, I believe, just graduated, Jack Berryman, who is working right now with the Ministry of Education as an education officer. I believe his doctor of education thesis was on the implementation of the Ontario heritage language program, a case study of an extended schoolday model. I just have the last chapter here, by the way, which I will produce for my colleagues if they wish to have it; I have pages 572 to 583. I think I have enough copies here and I will distribute them in a minute.

Dr. Berryman talks about section 15 of the Canadian Charter of Rights and Freedoms that prohibits discrimination, at least on ethnic origin. Section 27 states, "This charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." He writes:

"There is little doubt that there are parents, many of whom have ethnic origins that are not English or French, who want heritage languages, where numbers warrant, incorporated into the regular elementary school curriculum. As long as it remains a continuing education offering, there will exist an element of doubt as to the future of heritage language in the school curriculum. They want this possibility eliminated."

He continues to say that this would be a test case in the courts in terms of whether children who come from immigrant backgrounds or ethnic backgrounds, Canadian children of those backgrounds, are receiving the best possible quality education as a result of their first languages being completely ignored in the schools. How would you react to this statement?

Dr. Cummins: Basically with what I said in my submission. I think it is quite clear that I believe children are currently being assessed with tests that nobody claims are not discriminatory. I think there is universal acceptance of the fact that these tests have enormous cultural biases. The defense is that the people who are administering the tests use their clinical judgement to interpret them appropriately. One can question the extent to which they have had any training in doing that by virtue of the fact that there are no courses offered for psychologists that would address this issue across Ontario or elsewhere in the country's universities.

If one looks at the Canadian academic journals on special education, one finds virtually no research, no articles, no concern for this issue. If one looks at this kind of question in respect of the Charter of Rights and Freedoms, I think we would not look very good if a lot of the facts regarding the lack of concern for discriminatory testing were to be brought out. That is a specific instance of the broader question you have raised and that Dr. Berryman raised, but I think it is a very obvious one where there is at least a prima facie case for a violation of children's rights.

The Vice-Chairman: Mr. Grande, could you hold off while we get another question in here from Mr. Davis?

Mr. Davis: Just a short question to Professor Cummins: In your conclusions, you indicate that research shows clearly that promotion of heritage language development among minority children is of educational advantage. From your background and your own personal opinion, would you say that any child from a specific ethnic community would benefit by having this opportunity of having a heritage language incorporated into the educational system?

Dr. Cummins: Yes. I think the ethnic community that might benefit most would be the English speakers who right now are denied access to the languages of the city, except in some specific instances. As Professor Katsaitis indicated, the fact that more than 50 per cent of the kids in Orde Street School who take Chinese are from English background indicates the potential desire of many parents to have their children enriched in this way, but there is certainly no indication in the literature that any child from any ethnic background would not benefit from developing bilingual and trilingual skills.

Mr. Davis: Let me ask the other question. The present government has indicated that this type of instruction should be limited to groups of 25, and if I read your document correctly, you said that it is particularly an advantage for those of minority groups that appear to be at risk in our school system. Would you say that is a fair kind of qualification to place upon heritage language programs, that you have a class limitation?

Dr. Cummins: That is a fairly specific issue that I think has to be placed into the context of the different goals for promoting heritage languages. I have tried to address those in the literature review I did for the ministry, but they can roughly be divided into two types: One is enrichment goals and the other is survival goals.

Enrichment goals are not necessarily concerned with children who are at risk academically. They see the promotion of language skills as being educationally advantageous for all children and the heritage language program is largely conceived or has been conceived within that mould. The survival type of goal would relate to students who are failing academically, where

there is considerable evidence that promotion of children's bilingual skills can have a very beneficial effect in reversing that school failure.

I think one needs to examine very carefully what kind of programs are most likely to achieve those two goals. The issue of the numbers of children in the class is one issue that would need to be considered. The issue of the way instruction is delivered is another. The extent to which we might have bilingual programs as opposed to teaching a language as a subject is another. The answers to these questions will vary depending on whether you are talking about enrichment goals for certain groups of children or survival goals for kids who are failing academically. It is not a question one can answer in any absolute sense.

Mr. Reycraft: Bill 80 proposes to offer a heritage language as a language of instruction for the purpose of transition to English or French. I assume you support that aspect of Bill 80. In your view, how long would or should that transition be?

Dr. Cummins: Again, it depends on what the overall goals are. It also depends not just on issues related to individual students but also on issues related to the entire school system, because obviously there are very different administrative implications if we have transition programs go for three or four years as opposed to one or two years.

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The transition programs that were implemented in Toronto in the early 1970s to the mid-1970s went for two years in junior kindergarten and kindergarten, and then there were one or two that went for about a year in the later stages of elementary school. By and large, the evaluations of these programs were quite positive.

The goals of the program will determine how long it should go on. If the goal is to develop bilingual and biliteracy skills, as is the case with the bilingual programs in Alberta, Manitoba or Saskatchewan, then there is no reason not to maintain them at least through elementary school. The transition programs are usually interpreted in a narrower sense to help the student's transition to regular English instruction.

The amount of time that is required for that is going to vary according to different groups. In the United States, where such transition programs are in place, the prevailing research data indicate that for Hispanic children, a period of at least three to five years is required before they can make a transition to a regular English-only program at a level that is commensurate with that of their English-speaking peers. It may be different for different groups in this country.

Again, we do not have a lot of research on this issue in Canada. I do not want to generalize out of context because there are obviously questions here that refer to the Canadian situation specifically.

The Vice-Chairman: I do not see a hand. If I could ask a question myself, Mr. Reycraft has not come back to an earlier question he asked Professor Katsaitis, but obviously it is troubling some people that there are so many different language groups involved in the discussion. Clearly, there need to be realistic strategies to find ways to incorporate them in a living and viable school system.

I note that even your paper moves into a framework that is somewhat broader and beyond the scope of Bill 80 and I would certainly observe that myself. I wonder whether there is not a need for ongoing language-of-instruction programs beyond those transition programs, which of course is the case in the western provinces. Could you describe for us your sense of what some of the strategies might be in a school system to incorporate large numbers of languages on this model into the system?

Dr. Cummins: Obviously, the first step is to make it possible. One must look at the way the current legislation is phrased, which does not allow school districts and communities to get together to look at possibilities. In other words, it is a road-block to any kind of creative implementation of programs that could address these issues.

The fundamental point I would argue for is that any implementation has to be collaborative. We can learn from the implementation of the extended school day in the Toronto board over the last couple of years, where it is quite arguable that the program has had mixed effects in the school system. In many cases, it was implemented in an atmosphere where the school climate was poisoned by the kinds of debates that had gone on, so it was a source of tension rather than enrichment for students.

I would agree with Professor Katsaitis that the implementation should be an extended implementation, brought in over a number of years in full collaboration with the schools that are going to be doing it. There should be school committees where the school principal is intimately involved in providing leadership, to discuss, within the constraints of particular communities and schools, how all students can be enriched to the maximum effect through incorporating heritage languages within the school day.

For example, I would like to see an avoidance of teaching the language just as an isolated subject, transmitting the bones or the skeleton of the language without any real communication going on. We know from the kinds of results we get from many French-as-a-second-language programs that this essentially kills the language.

The kind of ideal implementation I would like to see would be one where heritage language instruction is integrated with subjects like art or physical education and where the language is not just taught as a subject but used for teaching one or two other subjects within the school day. It is used as something that lives rather than as something that is abstracted from any kind of living force. To do that, obviously, all people involved in the school have to sit down and work out how it can happen. The first thing that is required is goodwill and collaboration. That means the schools it is implemented in initially should be ones where the school climate is likely to be conducive to that.

I would see a longer implementation period than what has been suggested before. I would see this being phased in over maybe a 10-year period, with research, looking at the conditions for implementation that make it possible. I would set up conditions that would limit the extent to which it can be implemented to those situations where there is a genuine commitment on the part of schools to implement it in a realistic way rather than sabotage it.

Essentially, I am throwing the question back to say that there is not one pattern of implementation. The school system has to buy into it if it is going to succeed. The point of my submission is that many of the initiatives we have implemented over the last 10 or 15 years under the rubric of

multicultural education have failed. They have not changed the kinds of interactions between educators and minority students, precisely because there has not been a change of role definition or mindset on the part of many educators. The schools have not bought into it.

Mr. Davis: Professor Cummins, you indicated when I asked you the question, the two types of programs.

Dr. Cummins: Yes.

Mr. Davis: Would you agree that the introduction of a heritage language would be more advantageous for the youngsters you claim are at risk in that they are failing? If they were being educated in their own language, would they have more success either here or certainly down the road? Would you say that would take priority?

Dr. Cummins: Certainly, there is a more obvious contravention of children's rights in that case than there is in the case for students who are not failing, so I would see that as being a priority.

Mr. Davis: Okay. Thank you.

Mr. Callahan: With reference to your approach, you told us about how you would do it. Do you think that the implementation that was done and the way it was be done would be different in a place like Metropolitan Toronto compared to outside of Toronto?

Dr. Cummins: By definition, if you have a collaborative implementation, then the way it is going to be implemented would be determined by broad guidelines set by the ministry, probably more specific guidelines worked out by future school boards and then even more specific guidelines worked out collaboratively between specific communities and schools.

I think there has to be an opening of the doors to allow that process to take place. It is not something that can be imposed on schools and work. If there is a real reluctance on the part of schools to do this, then the ethnic communities have to keep on demanding their rights. Where the policy initiatives become important is that we are right now facing a reversal in the enrolment picture. There are going to be increasing enrolments and increasing demand for teachers over the next five or 10 years. Unless we see it as a priority to plan over the long term for building up this capacity to address the needs of students, we are not going to implement the kinds of measures at the university level, the kinds of courses students need and to plan for the future in a way that is going to allow us to do this within the regular school system.

The Vice-Chairman: Thank you. It is now six o'clock, which means that this committee will now adjourn until after orders at four o'clock on Monday afternoon.

The committee adjourned at 6 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

EDUCATION AMENDMENT ACT

MONDAY, JUNE 15, 1987



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

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Andrewes, P. W. (Lincoln PC)

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Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Barlow, W. W. (Cambridge PC) for Mr. Baetz

McGuigan, J. F. (Kent-Elgin L) for Ms. Hart

Clerk: Carrozza, F.

Witnesses:

Individual Presentation:

Silipo, T., Trustee, Board of Education, City of Toronto

From the Canadian Arab Federation:

Najjar, Dr. I. Y., Director, Arab Community Centre

From the German-Canadian Congress:

Hoffmann, E., Director, Association of German-Canadian Language Schools;
Co-Chairman, Helacon

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, June 15, 1987

The committee met at 4:33 p.m. in room 151.

EDUCATION AMENDMENT ACT
(continued)

Consideration of Bill 80, An Act to amend the Education Act.

The Vice-Chairman: We shall proceed with the hearings of the standing committee on social development on Bill 80. I recognize six members present and while we are minus Tory members, I think we are legitimately able to proceed under these circumstances. One of the members wanted me to suggest that the Tory hordes were absent. I will not use that language. I think that we may more decorously proceed with a more polite kind of language in this committee.

In any case, might I ask Mr. Silipo, trustee, Toronto Board of Education, to come forward please, as our first presenter. Do you have a document for us?

Mr. Silipo: I am afraid I do not. I certainly would be happy, if the committee finds it useful, to get something put together from the notes that I have prepared, but I do not have anything right now that is in a presentable form to give you.

The Vice-Chairman: I did notice that you have a table of the class numbers in different modes of heritage languages offered. That looks like a document that could be useful for the committee, and if you have a copy, or we could make copies, either just after you finish or--

Mr. Silipo: I can actually leave that particular document, and there are other things that I will be referring to through the presentation that I would be happy to get copied for the committee as well.

The Vice-Chairman: Thank you very much. Mr. Callahan, you have a question?

Mr. Callahan: No, I would like to make an observation. It is now 4:35 p.m. and there is not a member of the official opposition in attendance. If that demonstrates the interest they have in this issue or, more important, the way they accommodate people who have come here on a schedule that is set for four o'clock. They have not shown, and I think that is unfortunate.

The Vice-Chairman: Point noted.

Mr. Reyecraft: Deplorable.

Mr. McGuigan: Unfortunate.

The Vice-Chairman: Mr. Silipo, would you proceed please in any way you desire.

TONY SILIPO

Mr. Silipo: Thank you for the opportunity to speak to you. I just want to make it clear from the outset, because I know that on one of the copies of the list I received I was listed as the Toronto Board of Education, that I am here speaking strictly as an individual, as a trustee of the Toronto board, and that therefore the comments that I am making are personal, although obviously in my comments I will be referring to some initiatives that the Toronto board as a board has undertaken and that I certainly have supported.

I speak to you then as a school trustee who has been involved in the issue of heritage language since 1978, but also, more personally, as an immigrant and the son of immigrants and therefore someone for whom this issue has a very personal, significant resonance.

I would like to make my support for the principles that are set out in Bill 80 very clear and also try to share with you some thoughts on how I think the principles embodied in that bill can be implemented.

I was in the gallery on December 18, when Bill 80 passed second reading. I was one of those who had to see it, I guess, to believe that it actually would happen, that a bill which attempts to entrench into the mainstream of our educational system the languages and cultures of Ontario, was finally being approved, albeit only in principle, by all three political parties. That was something that to me was quite significant. It was not until later, as I sat and thought about the event and thought back to my experience with this issue over the last eight and a half years, that I realized just how important that event was.

As you may or may not know, the Toronto Board of Education has a long history of involvement in this issue, going back to the formal establishment of the program by the Ministry of Education in 1977, but certainly even prior to that, with the establishment of various local initiatives that schools within the board had undertaken.

During the time I have been involved with this issue, I have seen--in the early years when I was a trustee--the struggle by many communities to simply establish programs, whether they were after school or integrated during the school day. I have seen that push from the various communities result in work groups being set up at the Toronto board level, back in 1980, to investigate ways in which we could increase and improve the quality of the program.

That work group, which I had the pleasure of chairing, went through about two years of public and private discussions and debate in Toronto schools with parent groups, teacher groups, etc., with a good cross-representation of discussion, representation on the work group itself, and resulted in the adoption by the board of this report, ??Towards a Comprehensive Language Policy, which I know some of this committee have seen. Mr. Chairman, I would be happy to make copies of those available to your committee.

The essential principles adopted through the board's passing that report were to set up a systematic process of encouraging the integrated heritage language program during the school day wherever possible, albeit under the constraints that we have of having to add a half hour to the school day; and to make a request to the ministry for permission to be able to establish on a pilot basis bilingual and trilingual programs using the languages of instruction.

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For us this is an issue that we have dealt with for a number of years and we have continued to deal with since that time, and we believe very strongly that we can move forward from where we are now. I will come back with some comments on that a little later.

I have also seen, following the adoption of that report, a few years of struggle that the board went through with our teachers' federation. It was a fight that began over the question of the extended school day, that was put by the teacher leadership as being one of deterioration of working conditions as a result of the extension of the school day which was necessary to accommodate the integration of the program. I think it was one that developed over that period of time into a real debate or re-debating the basic concepts of whether or not we needed to have the integrated day program. As members of the committee may or may not know, that debate was eventually resolved by a board of arbitration, which found that the provisions that the board had made to try to accommodate the concerns of the teachers on the working-conditions issue were fair and that the board maintained its power to make policy decisions around the integration of the program.

All of that is to say the Toronto board has had a long history, and I personally have been involved with this issue for quite some time. One of the things that I find fascinating in looking back at the last eight to nine years, is that despite all the obstacles and the struggles that the integrated day program, in particular, and the heritage languages program, in general, had to go through during this period of time, we have gone in the Toronto school system, from three schools offering integrated day programs in 1982, to 21 as of next September, a significant increase reflecting a significant demand for this type of program.

At the same time, there have also been smaller increases in both the after-school and particularly in the weekend programs. We also know there are a number of groups that are eager and who have been eager, certainly since the passage of this report back in 1982, to get the board involved in setting up some pilot programs using the language as a language of instruction.

Why then is this issue so profound and so important for many people? I think it is because involved at the basis of the debate is a redefinition or at least a re-examination of what Ontario and Canadian society is all about. We as politicians, whether we are at the local school board level or at the provincial level, have an obligation, as the work group observed in 1982: "...to support the process of revealing the many cultural identities and languages which make up our nation. Through realizing the potential of our many differences, we shall be richer than when we began. Through listening to each other, we shall realize we all have much to say. Through dialogue, we shall begin to show the true face of our multicultural Canada, and our schools must be a part of this dialogue."

Bill 80 and the ministry paper which it instigated have certainly set up that discussion on a provincial level. As I see it, there are basically four significant principles embodied in Bill 80.

The first is making the provision of the heritage languages program mandatory on school boards where there is a sufficient number established in terms of need.

Second is integrating the teaching of the heritage languages program during the school day.

The third is the use of the heritage language as a language of instruction in transition programs.

The fourth is the establishment of the advisory committees.

When members of the three political parties at Queen's Park supported Bill 80 on December 18 in second reading, I hope you supported all four of these principles. The recently released paper from the Ministry of Education cast some doubt on that and made it clear that, at least within the governing party, there may be some doubt about the support of all those principles. I urge you to continue your support for those principles or re-examine your decision if you have decided you cannot or will not. You should do so essentially because it is educationally sound and socially desirable.

I know Dr. Cummins was here speaking to you last week, and I am sure he was able to speak to the committee at length and much more professionally and with much more authority than I can on the educational soundness of using languages as languages of instruction and of teaching languages.

As to the principles which form the basis of a third language policy for school boards and for the provincial government, I cannot put it better than did the work group in 1982. I just want to quote again from that report. Because I see that what you are involved in doing is in effect setting up a process on a province-wide basis for doing some improvement in the short term and setting up some conditions for vaster improvements in the long-term, I believe the goals are for us at the provincial level now as they were for us at the Toronto board level a few years ago. That is, in the short term the aim of this kind of policy in third languages should be to strengthen the present program in the elementary schools and the modern languages program in the secondary schools.

In the long run, the policy should aim at bilingual and trilingual programs as the only satisfactory way of implementing the educational principles which underlie this kind of policy. These principles are practically self-evident.

They are: "First, that language is so vitally related to thought, knowledge and social activity that it is not an overstatement to say that it is language which makes us human. Hence, language must be central to education.

"Second, although languages may differ in their usefulness in various contexts such as the scientific, educational or political, they are equal in their humanizing and socializing capacity. Hence, from a strictly educational viewpoint, all languages are equal.

"Third, every child has an equal right to preserve a vital link with his or her heritage. Hence, to recover or maintain the language of his or her ancestors is a legitimate expectation.

"Fourth, to meet the educational needs of all students, the widest choice of language programs that is compatible with academic excellence should be provided. While mastery of at least two languages should be encouraged, each parent or student should be free to decide which specific languages the student will learn. At a time when many high school graduates experience difficulty in meeting university entrance requirements in English, let alone other languages, it is imperative to examine our language policy critically and to seek a better one."

What is that better policy? I believe it is a policy which not only says to school boards, you must provide the program where enough parents ask for it, but also says you must do so during the school day as part of the regular school program. I think that is a bare minimum.

I was genuinely saddened and disappointed to see the ministry paper did not embrace even that basic principle. Because, if you believe, educationally, all languages are equal and that it is possible and desirable to encourage children to retain and develop their first language and also encourage all children to learn about others' languages and cultures, then you look at what is the best method pedagogically. And the answer to that is that it is as an integrated part of the school day, either as a subject or, more preferably, as a language of instruction.

We know that from the experiences in the French immersion programs in terms of what particular ways are better as teaching methods for language learning. There are problems with implementation, of course, but I believe the attitude should be to face them and resolve them rather than walk away from them simply because it is a topic which gets people very excited, as it inevitably does.

I believe the point should be to establish an objective, a goal, and give people a reasonable amount of time to get there providing, of course, the support in terms of resources and other support that is necessary to get there.

I hope the disbelief, which turned to a pleasant surprise on December 18, and was turned again, by the ministry paper, into disappointment, can be turned for me into optimism. Some of the issues I saw raised in the ministry paper dealing with the erosion of the community school, the fragmentation of educational experience, the questions around busing, show for me a reluctance to tackle a delicate and difficult issue. They are real and important problems, no doubt, but they can be addressed.

What was most disappointing was that there seemed to be new phraseology for old concepts; that is, the old concepts we had to deal with in 1982 and which I am sure you, as a committee, will deal with as these hearings continue; issues around balkanization, ghettoization, etc.

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Our experience in the Toronto system shows the contrary. It shows, where the local school has supported the development of the languages and cultures of the home, that not only is there no fragmentation but there in fact is harmony created and a very positive experience for students in the schools, which not only leads to a better learning environment in terms of a language issue, but also leads to a better learning environment overall.

As to the fragmentation of the educational experience, the concept that we cannot add anything else because we already have an overloaded curriculum, I think that one needs only to point out that you are asking and looking at, not adding something, but simply re-establishing some priorities, taking into consideration what educators have been telling us for years, that a child learns language skills in his or her first language best and then can transfer those to other languages.

As to the notion that this will harm the child's ability to learn English, which is also something that we have heard a great deal about, I would suggest that you simply ask yourself, "What parent, whose children are

growing up in Toronto or Ontario today, would want his or her children not to know English?" I can certainly relate this to the community that I represent in terms of working-class and immigrant parents. Do you really think that parents would continue to ask for these kinds of programs, as they have been doing continuously at the Toronto board level and certainly elsewhere, if they felt that it would hurt their children's ability to learn English? I think, in fact, we know that the contrary is true, that reinforcement of the first language can have some positive effects on the learning of English for children.

Regarding some of the other points that are raised in the ministry paper, training for teachers and other issues, that I realize are not directly before the committee, I hope they will be dealt with in some way. Yes, those are real problems, and I am happy to see that there are some initiatives undertaken or proposed by the ministry in the paper to deal with some of those--an improvement in curriculum development, in getting some teacher training. But I think there is still a great deal that needs to be done, and that kind of process needs to be done in a very serious way, not simply by continuing the programs on a continuing education basis.

In conclusion, let me share with you briefly some thoughts as to where we should go from here. First, I hope that this process will result in the establishment in law in Ontario of the mandatory nature of the program, that is, where there is a strong enough request that boards should be obliged to provide the programs. I was happy to see that, at least, that concept was accepted even in the ministry paper and I hope that concept will be a bare minimum that comes out of this process. But I think that is only the first step for me.

The second point is that the concept of the integrated day program should be established as a desirable objective, again in terms of where the numbers are sufficient to warrant, and with a reasonable time line provided to school boards to comply with that. I think it would be unrealistic for us to expect that, within a year, boards would be able to do that; some boards would, some boards would not. I think a reasonable time line of a few years is something that we all could live with, and in fact is desirable because it allows for a proper process of planning and implementation. I believe though, in the meantime, that a process should be started to provide the kinds of support services that are outlined in the ministry paper.

The third point I would like to suggest is that on the question of language as a language of instruction, at a very minimum enabling legislation be established to allow those school boards and those communities that are ready to go ahead, to do so. We certainly know, in terms of the request that we had made in 1982 and in terms of some of our parent communities, that there is interest out there, not just in the Toronto system but in other systems, in other areas in Metro and, I would not be surprised, elsewhere, for that kind of process.

We also know that these programs exist and have existed for some years in other parts of Canada; so they are viable. They can work. Recognizing that there is some hesitation within this province to move in that direction, I suggest at the very least some process that sets that in motion, that allows those organizations and those boards that are ready to proceed now, to do so at the present time.

The fourth point is that in terms of the advisory committee that is suggested in Bill 80, there is no doubt that is a very useful process. The

pressure for the improvements in the program at the Toronto board level has come as much from community members who participate on our heritage languages and concurrent programmes consultative committee as it has from trustees and parents at large, and I think that is a very important process in terms of having a body there responsible for continuing to improve the program.

Just to sum up, as you proceed with discussions on this issue, you will hear a great deal about the question of whose responsibility the language issue is, whether it is the home or the school. There can be no doubt that the home has to play a very significant role, but I think we are at the point where we also recognize that the school has to play a very important role as well.

I am sure you will also hear a number of comments about problems with implementation, problems of staffing, etc. I urge you not to forget that in the end some basic decisions about the future of education in Ontario will rest on your decisions. I hope that you will take the position that the many problems which need to be faced are properly introduced as change in Ontario educational policy will be faced and that you will vote to move Ontario schools into the reality of the society which it serves. Thank you, Mr. Chairman.

The Vice-Chairman: Thank you, Mr. Silipo.

Mr. Reyecraft: Thank you, Mr. Silipo, for coming before us. Earlier in your presentation you talked about the integrated day programs that are in now in place in 21 schools in Toronto. Could you talk a little bit more about that model? I am not familiar with it.

Mr. Silipo: The integrated day model that we have in Toronto is really an integrated extended day model, in the sense that under present ministry regulations, in order for us to provide the program during the school-day, we are obliged to extend the school-day by an equivalent amount of time, which in our case is two and a half hours a week or half an hour per day. The program is taught at any given time during the day.

Again what we have done, as a result of various discussions and negotiations with our teachers' federation, is that we have established the programs basically. In most cases the programs are taught at one given time during the day, that is, at one particular point during the day children go from their regular classroom program to the language programs or, if they are not taking the language programs, to other programs which we have labelled, "concurrent programs," which are provided for students who do not participate in the program. Not all students are involved. It is an option that is provided within the school.

Mr. Reyecraft: Could you give us some examples of the concurrent programs?

Mr. Silipo: Yes. Concurrent programs are programs which deal with using some of the language programs within the school in terms of English language development and use those in an arts-activities kind of program, such as drama activities or arts activities. Depending on and obviously adapted to the age of the children they are used to build on the English language skills that form part of the regular classroom program.

Mr. Reyecraft: Thank you. Can I go ahead? One of the four principles, of course, that you spoke of is that heritage language is to be offered as a

language of instruction as a transitional measure for purposes of transition to English and French. How long should that transitional period be?

Mr. Silipo: I guess I would like to say two things to that. One is that I am not sure they should simply be for transitional purposes. If they are only set up for transitional purposes, I can certainly tell you from the one experience that the Toronto board had back in 1975, that they will be fairly successful and very shortly so.

There we had a program in 1975 which dealt with taking a group of senior kindergarten students, having them taught by a teacher who spoke Italian because the class was predominantly Italian-speaking children, and the teaching assistant spoke Italian. By the time the children reached, I believe, the end of their grade 1 year, they were totally fluent in English but unfortunately had lost whatever knowledge of the Italian language they had.

In terms of the process, there has to be another part of it, and that it should not be aimed simply as a transition program but also aimed as a retention of the language program. That is why I say I have some hesitation in simply setting them up as languages of instruction dealing only in a transitional program. I think you could reasonably look at having them if you were going to start them in the early years, which I think is what you should do, as long as the objective was not to simply do the transition to English but to also reinforce the knowledge or to teach the original language or the other language.

I think there are different models that exist, and there, we could look at some of the French immersion models as examples or at some of the others closer to this kind of experience that exist in some of the western provinces in Canada where the time varies and it really depends upon the particular needs of the group of children who are there.

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I am not giving you a very specific answer. I realize that and it is not that I am trying to evade the question, but it is simply that I do not think there is any one answer that can be applied to it. You can certainly start off, though, as a general rule probably by saying that you should have them for at least the first two or three years of school, with varying amounts of time, perhaps starting out with a large amount of time in that language and then maybe diminishing as the children grow older.

Mr. Reyecraft: One further question: You talked about the displacement of some other activity with the heritage language. It was going to be provided as a subject of instruction. You used the term and said it should be considered a "re-establishment of priorities" rather than a "displacement of activity."

But whatever you call it, if we are going to provide two and a half hours a week of heritage language instruction as a subject of instruction, something that is now within the curriculum is going to have to go. In your opinion, what activities are now within the curriculum that should be at the bottom of the priority list and would be those that would be eliminated if heritage languages became a subject of instruction?

Mr. Silipo: What I meant by looking at reprioritizing was based on the notion that what you were doing through these language programs, especially in the first years, is, for the majority of children, reinforcing

language skills they already have some familiarity with. If you are dealing with a group of children who come to school speaking some amount of another language, then you are going to be teaching for part of the day in that language. What you are looking at doing is reinforcing the language skills they have.

If you wanted to bring it down to what you replace or what you remove, I suppose you should be looking in that area, in terms of the language skills, so that the children in these programs would be, in effect, learning basic language skills. The only difference is that instead of learning them in English they would be learning them in whatever the particular language happened to be. Then, as they grow older, you would be able to transfer those skills.

I think the concept of reprioritizing widens and it was not simply a way of trying to label it something else and pretending that it did not exist. The fascinating thing was that when we made that request of the ministry back in 1982, we were going through a process where the school day was being extended anyhow because the ministry at that point added half an hour to the school day, regardless of what we were doing. This was why they took the recess periods out of the school day. Since the fall of 1982, for most of the schools in the Metro area--I am not sure what the situation has been in others, because part of the process was to try to bring similarity across the province--in effect the school day went from four and a half hours to five hours.

At that point, we were in a convenient time of not having to look at what you had to remove in order to provide this program. I think now, certainly the issue would be more difficult for us as a school board and for other boards, but I think there certainly can be some kind of guidance given.

What I am saying is that you do not really have to resolve that issue 101 per cent. I think you can give some guidance to boards as to the kinds of areas they should be looking at and then, basically, as long as there was satisfaction within the ministry that a good and sound program was being provided, I do not think the removal of half an hour from "other activities" is going to make any kind of serious impact on the learning of the children. Whereas, on the other hand, balance that off against the potential and demonstrated positive impact of a program like this, I think would more than outweigh any kind of negative implications.

Mr. Grande: I just have a couple of questions. I really do not want to deal with a research question, because Dr. Cummins is acknowledged to be the expert in this particular area in Canada and he gave us an overview in terms of the literature and also in terms of the educational benefits. It is as clear as we could possibly have it that there are educational benefits to children and not negative impacts on this.

I want to ask you a question as a trustee and one, perhaps, as a lawyer, which I understand you are. As a trustee--

Mr. Callahan: You just reduced his credibility.

Mr. Chairman: We always have to bring up the seamy side of people's backgrounds.

Mr. Callahan: I was prepared to believe every word he said up to this point, but now--

Mr. Chairman: It takes one to know one--

Mr. Grande: Let me ask you this, as a trustee and a politician. Obviously, all of us here have that kind of political input. When all is said and done, the western provinces have tackled this issue. They have implemented programs. They have them in the schools during the school day, both as a language of instruction and as a subject of instruction. Quebec has these programs we are talking about during the school day, as subject of instruction. The question from me to you is, what do you think are the factors that mitigate against, obviously, these kinds of programs being established in Ontario? That is the kind of thing I think we should come to terms with. Are there any factors here in Ontario that are different from those in Quebec, Alberta, Saskatchewan or Manitoba that might make it impossible? It is a wide-open question. I guess you can answer it any way you want.

Mr. Silipo: Yes. Obviously, I do not think there are any particular reasons why we cannot do in Ontario what other provinces have been doing for a number of years. The question you pose is really one that I have tried to come to grips with myself, in terms of why it has been so difficult to get this province moving in that direction. It is fascinating when you compare the situation here with just the western provinces, for example. One of the things you find is that they have done it. They may not have as many people who are interested in this or involved in the programs as we might have, so I asked myself, is the fact that we have so many people here who are interested a factor? I do not know. That is interesting. It is an interesting comparison.

There was something else I wanted to say that just escapes me. There was one other point.

It is the kind of thing that we have dealt with at the Toronto board. We certainly raised it in 1982 through the work group report. We thought the province was ready then. Certainly, we were ready as a school board to move in then. I do not want to believe that Ontario society is really that much more small-c conservative that it cannot deal with this kind of change. I believe it is time we do that and I think we can.

It may simply be that it comes down partially to a question of fear of the interplay between different ethnic groups and, realistically, the kind of power brokerage that goes on and that exists, and whether or not there may be a belief by some that by providing this kind of program to students we would be giving some kind of advantage to students who come from homes where language other than English or French is the first language.

I do not know how much of a factor all of those things have been in recent Ontario politics on this issue. I certainly know that pedagogically it is a good thing, from everything I have seen and everything I have read and been told and seen actually in practice in other parts of Canada, let alone other parts of the world.

I think we can move forward, because one of the things we know is that when we actually do this kind of a serious integration, whether it is as a language of instruction or just as a subject of instruction, that we really begin at that point to hit as target groups not just children whose first language is that particular language, but interestingly enough, we begin to hit as target groups children who are from English-speaking homes.

One of the fascinating things that I did not mention earlier was that one of the things we have seen, as we have moved in schools from after-school programs to integrated day programs, is not only an increase in the enrolment, overall, in the program--tremendous jumps in enrolment in the program--but also an increase in the percentage of children who enrol in particular programs who are not of that particular ethnic or language background. We can go through class by class and identify that.

Of course, we see that more significantly in some programs than we do in others. I can tell you, for example, that in the integrated Spanish programs that we have in our schools, 60 per cent of the students who are in those programs are not of Spanish-speaking background. There are some reasons for that. Spanish has tended to be a language that has had that kind of attraction at the secondary level, and we are seeing that at the elementary level as well. There are other languages where, although there is not as significant a number, there has certainly been an increase.

There may be various reasons why we have not done it in the past. Going back to something I said earlier, I saw the mood as reflected in the passage of this bill on second reading with support by the three political parties as being a very significant step forward. I hope that kind of consensus around this thing continues, because I think in the end that is going to be a very significant factor in how far we can go. I believe very strongly that the more we are able to depoliticize this issue and deal with it as an issue related more to the pedagogy that is involved in it, the better off we will all be.

Mr. Chairman: I just wanted to get some advice from you. I realize you had a very late start. It was not because you were all waiting until I finished my speech in the House before you got going. We are going to run into some time constraints. I have both Mr. Allen and Mr. Callahan in line to ask questions. Can I try to do some limiting to maybe another one or two questions, Mr. Grande?

Mr. Grande: That is fine. Just one more and that is it. It is going to be a very quick one, and that one will be the second one as a lawyer.

You referred to the Minister of Education (Mr. Conway) and the yellow paper. Some people call it a white paper, I call it a yellow paper. You also made mention in your presentation with regard to the first initiative of the ministry to require a board of education to provide or purchase from another board, instruction in a particular heritage language that parents of 25 pupils made a request for. I guess some people are interpreting that as mandating a board to establish or to buy into another board that has established a heritage languages program. Of course, this only happens after school or on Saturday or in the extended-day situation.

I am just wondering, in terms of the Education Act, how the Minister of Education or the Ministry of Education could change the Education Act to mandate a school board to be offering a program on a non-school day or after school? In other words, my understanding is that during the five-hour instruction period, the Ministry of Education has the responsibility to establish guidelines for those five hours, but how could the ministry possibly do it after school or on Saturdays?

Mr. Silipo: I do not know. That is an interesting question. I am not going to answer as a lawyer because I have not looked at this issue enough to be able to tell you whether that would be a problem. It might be in the sense that certainly that was part of the issue that was mixed up in the

confrontation we got involved in with our teachers' federation about whether the integrated day program was continuing and therefore it was continuing education, and whether we had the right to put it as part of the school day even though we were extending the school day.

It could raise an interesting debate in terms of how it might be viewed by teachers' federations and other people. I do not know what the answer to that is.

Mr. Allen: A couple of quick questions. First of all, what is the maximum number of heritage languages in a single school in one of the Toronto board schools?

Mr. Silipo: It is seven. We have seven in one school in the west end of Toronto.

Mr. Allen: I gather from the Toronto board's experience that it would not be likely that any given school would be requested to offer the full range or potential of heritage languages that are out there.

Mr. Silipo: No.

Mr. Allen: That is a fear that obviously people are pointing to as a logistical problem, but you have not encountered that in your organizational attack on this question?

Mr. Silipo: We have not. I would dare to say that if we in Toronto have not and other boards in Metro have not, I do not think there would be many places elsewhere where you would run into that kind of situation.

Seven is the maximum number we have. We do offer programs in about 34 different languages and almost a dozen of those languages are offered in integrated day programs, ranging from one language in a couple of schools to the seven languages. That is the largest number we have. We have generally been able to accommodate most requests in the integrated day programs for all languages that have been requested. There have been cases where we have had one or two requests for a particular language program, but we have not been able to accommodate it because of the enrolment.

Mr. Allen: As a particular strategy in your board, you have adopted the longer day approach. I wonder if you could tell us anything about the effects of the longer day, as far as children are concerned, pedagogically. Are there any adverse problems with that? That would be one way to go, obviously, to avoid the problems that Mr. Reycraft was raising earlier about displacement.

Mr. Silipo: It has obviously been a vast improvement over the after-school program. There have been some problems and, of course, the confrontation with the teachers' federation came about as a result of that. It has had some impact on the provision of after-school activities. At least in the initial stages, there was a reduction in after-school sports and other activities. Some of those have rebounded back, have been re-established. I guess there is the fatigue factor that comes into play that teachers have complained about.

We do have an attitudinal study that we did in about 1983-84 that touches upon some of those issues. I certainly could make that available to members of the committee who might be interested. It was those kinds of issues

that I think are there that have presented some problems with the longer school day.

Mr. Callahan: You mentioned the western provinces. I gather you are talking about Manitoba.

Mr. Silipo: Manitoba, Alberta.

Mr. Callahan: Alberta. How many languages are there in Alberta relative to how many potential languages there are in Ontario?

Mr. Silipo: I really do not have much that I can give you in the way of statistics.

Mr. Callahan: I may be wrong, but I understand there are 53 potential languages in Ontario relative to to a very much smaller number in Alberta.

Mr. Silipo: It would certainly be much smaller.

Mr. Callahan: In fact, it is probably somewhere in the neighbourhood of about 10 maximum?

Mr. Silipo: Probably more than that. If the point you are making is that there is a much smaller number, I think the answer is yes, there is.

Mr. McGuigan: Mostly one language.

Mr. Silipo: In that kind of situation, yes.

If I can say, that was exactly what we had addressed to us as a Toronto board a few years ago when we were looking at this issue. Up until we began the serious process to get schools involved in integrating programs, we had three schools where they were offering one language in each of those schools. They were offering Chinese in two and Portuguese in another. The problem that people cited to us that we could not overcome was moving from those one-language programs to the multilanguage programs that we have. I think we have done that fairly successfully. It can be done. It just takes a bit more time in terms of the planning process, but I think it can be done.

Mr. Chairman: Thank you, Mr. Silipo. Sorry I missed your remarks at the beginning, but I am an avid reader of Hansard like other people who suffer from insomnia.

Mr. Silipo: I am sure it will be jovial reading.

Mr. Chairman: You know, Tony, I always dote on every word you say.

Can I ask Dr. Ibrahim Najjar to come forward?

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Mr. Callahan: --get a longer hearing, if they would show up on time--

Mr. Grande: I have these to circulate to you.

Mr. Chairman: I hope it will not be a few moments--

Mr. Grande: No, it will not be. But I did make a commitment to members of the committee that I would be providing some information regarding the Report of the Commission on Private Schools in Ontario by Bernard Shapiro, and also a copy of a paper called Ethnic Bilingual Education for Canada's Minority Groups by Stephen Gillett, if you would like to give that to the committee.

Mr. Chairman: This has just been circulated to you. Welcome. I think I will just divide up the time equally to at least make sure each of the the deputants gets a chance to get a presentation in.

CANADIAN ARAB FEDERATION

Dr. Najjar: I had hoped that I would share my time with the member of the North York Arab Advisory Committee. He would have been able to further detail some of the questions, or provide some answers that Mr. Silipo is dealing with. But, in this case, he did not have much of a chance to come.

I would like to thank you, Mr. Chairman, and members of the committee for this chance to appear in front of you and present to you the message of the Canadian Arab Federation.

The federation fully supports Bill 80, and the principles upon which it is based. This bill proposes to amend the Education Act in Ontario to allow the use of languages other than English and French as subjects during the regular school day and as a medium of instruction.

The Canadian Arab Federation is a national organization with member organizations throughout Canada. It saddens us, those in the federation, to see that the Ontario Arab Canadians are still deprived of the right to maintain and develop their heritage language, quite unlike their fellow Arab Canadians in the provinces of Alberta, Saskatchewan, Manitoba and Quebec. Arab Canadians have taken advantage of the right given to all Canadian linguistic groups in these provinces and have demonstrated that the maintenance and development of the heritage language is a great asset both for the personal development of the pupils and for sharpening their pedagogical skills.

Since 1974, Ontario has taken positive steps towards recognizing and cultivating the human and pedagogical resources inherent in the living languages of the province. These steps, however, still fall short of solving or properly addressing the problems that various Ontario linguistic groups face. We in the Ontario Arab community share the same concerns of other Ontario communities. Thousands of people come to Ontario from Arab countries and only a few manage to maintain and develop their vibrant language. In our view, this is a great loss, not only to Arab Canadians, but also to Ontario. The government must take stronger measures to correct this situation.

Maintaining and developing a language in addition to English and French requires a strong will and hard work, both by the linguistic community and by the province or country as a whole. We share the aspirations of the multicultural Canadians who see richness in the linguistic diversity of this country and who want to see Ontario fully multicultural and multilingual.

We want the Ontario government to face its multilingual and multicultural obligations seriously and amend the Education Act. All Ontario Canadians have the same fundamental rights, we believe, and since Ontario has many different linguistic communities, these communities should also have the same fundamental rights. Children of an Ontario linguistic community should

not be deprived of what is considered essential and necessary to children of English and French linguistic groups. This demand for equality is fundamental and the sooner it is reflected in the education system the better the system will be. It is time that Ontario officially recognizes the inherent equality of all its citizens to each other and the value of their diverse cultural heritages.

Our present government has indicated its support for a multilingual and multicultural province and country in many speeches and statements. It has voted in favour of Bill 80 during the first and second readings. Before coming to power, many members of the Liberal opposition party voiced their support for the bill when it was introduced on other occasions.

Unfortunately, the position of the Liberal government has not been unambiguous, despite its public support for Bill 80. The Premier (Mr. Peterson) and the Minister of Education have indicated to the Ontario Arab community, to the Canadian Arab Federation and to the Council of Ontario Communities on numerous occasions, that the government is seeking to address the issues of the heritage program in the province and that it will make recommendations about the heritage program. Like other communities, we expected the government to propose actions that will solve the difficulties and problems that we face in the current heritage program. Instead, the government proposed actions aimed at boards of education that have not yet introduced heritage languages to their schools. To the boards of education that have heritage languages, the government is willing to give only monetary support.

While the intentions of the government are laudable, its proposed actions lead us to suspect these good intentions. On the one hand, the government conducts a study to deal with the problems of the heritage program and recommends actions aimed at some other program. The government position paper makes the intentions of the government suspect. It is even doubtful whether the government, given the present Education Act, can force a board to introduce heritage language programs outside of regular school hours. For those boards who provide heritage classes, the position paper offers no solutions.

Of course we cannot speak on behalf of boards of education, but the Arab communities throughout Ontario have experienced various difficulties with the present heritage language program. While it is better to have heritage language classes after school hours than not to have them at all, we feel that the present program is not adequate to fully maintain and develop our heritage language. We want the Education Act to be changed to allow for heritage classes during the school day and for using the heritage language as a medium of instruction.

Teaching Arabic, for example, after school hours and on Saturdays is a great inconvenience to students and parents. Even where parents and students have adequately met this challenge, they met with yet another barrier. Students are faced with the question of how significant is a language or a subject that is not taught during the school day, and that does not have the full support and recognition of the province's system of education.

In many cases, derision by fellow students, who are from the dominant cultures, create the psychological climate that makes persistence and excellence in heritage classes an oddity. In fact, learning a heritage language becomes a punishment to many well-meaning pupils. Furthermore, the fact that the teaching of such a language is conducted outside the school day gives

these classes a dubious value that makes many students and parents hesitant to participate in these classes. These are some of the concerns of the Arab community, and other communities in Ontario, I dare say, which the government persists in ignoring, despite its promise to address them.

Bill 80 addresses these concerns, and that is why we and other communities support it.

Other provinces have introduced legislation to allow the use of a language other than English or French, the two official languages in Canada, as languages of instruction. The use of such languages is growing steadily, and the pedagogical benefits are well documented. Bill 80 allows for the use of heritage language as language of instruction. The government position paper remains silent on this issue giving us another reason to be dissatisfied with it.

Bill 80 has other important features that seek to comprehensively address the issues involved in teaching a heritage language. It allows for the establishment of advisory councils that make for better co-operation between a linguistic community and the boards of education. The bill also addresses the question of student numbers and recommends that boards introduce heritage language classes upon the request of 20 or more students.

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Bill 80 aims at amending the Education Act to safeguard the preservation and development of the multilingual richness of this province. We join hands with all those who want to see Ontario fully multilingual and multicultural. The Canadian Arab Federation also joins hands with many other Arab organizations such as the Arab Community Centre of Toronto and the World Lebanese Cultural Union in supporting Bill 80."

Mr. Chairman: Thank you, Doctor. Questions? I am going to let them run until twenty to six and that will give the same length of time to the next presenter.

Mr. Allen: I wonder if Dr. Najjar could remind us of what the judgement of the arbitrator was in Toronto when this was a case of considerable dispute a couple of years ago. There was an arbitration as to whether it was fair or discriminatory for students to be required to take classes after school. What was the arbitrator's name, Mr. Grande?

Mr. Grande: Owen Shime.

Mr. Allen: Are you familiar with that judgement?

Dr. Najjar: I am sorry, I am not familiar with that.

Mr. Allen: You are not. It was something I was going to ask the previous presenter. I believe apropos of your point about the problem of young people taking the class after school rather than in the day program--and their sense of being discriminated against, being excluded from other kinds of activities and viewing it as a punishment and so on--that the Shime report argued precisely that. He argued that it was a fundamental act of discrimination against those children to require them to take a class outside of the school hours and thus deprive them of those other activities and single them out as having a special education of some kind that was entirely different from the others and outside the hours that other students were required to be in school.

Dr. Najjar: I agree with you. I will give you my opinion. It seems to me intuitively as against my primitive sense of fairness or natural justice. Just simply, it is discriminatory when you are not able to fully participate in the educational system and grow with it, when it is possible for the system to allow for these feelings to grow.

Mr. Allen: Do you, as a member of the Canadian Arab Federation have any comments to make about the programs that are available in other provinces for Arab children?

Dr. Najjar: We are quite happy with them. As a matter of fact, the community in Alberta has taken advantage of those courses and it has its own Arab schools in which they teach Arabic half of the time and English half of the time, the various courses. Consequently the people have better connections between their Canadian identity and their background. There is not that schizophrenia involved when they have their grandparents or relatives come over and they are not able to communicate with them, simply because the parents are not well equipped to teach their language. They, of course, teach them how to speak, but if that is not maintained properly with proper grammar and reading ability, this skill becomes very inadequate, especially when people are speaking real language and you try to express yourself very inadequately--you shy away--and that does not bode well for the better communication between generations.

Mr. Allen: So that there is a much more harmonious feeling between school and the community and the Arab home?

Dr. Najjar: That is correct. Also, between the community, home and even between people who come from abroad to visit you, such as larger families right now.

Mr. Allen: How many years have the Arab bilingual programs been in place? Do you know that?

Dr. Najjar: I am not entirely familiar with that.

Mr. Allen: The reason I asked that question--and you may be able to answer the supplementary--was to know whether there was any conclusion drawn as to the effect of the bilingual schooling experience upon the acquisition of English and the main language in the community.

Dr. Najjar: I was told that the students who study Arabic and English, excel in English more than those who study only English.

Mr. Allen: Is that right?

Dr. Najjar: This has been documented quite well.

Mr. Chairman: I am sure if you are able to direct us to some of the documentation, it would be interesting for members to receive.

Can you just tell me demographically where most of the Arab population lives in Ontario? Can you give us a brief idea of that in terms of the kinds of communities that are likely to be affected directly?

Dr. Najjar: Here in Toronto; in Ottawa; London, Ontario; and in Hamilton.

Mr. Chairman: Those are the major areas.

Dr. Najjar: The major areas--There are more schools teaching heritage language in Ottawa. I think they sent you a brief--and they sent me a copy--maybe a few months ago--in which they say: "Please, Mr. Johnston, look at Bill 80--it is great--because we have experienced problems. Although we are permitted to teach our students on Saturdays and after work, it is not credible. We cannot convince the parents that this is something good. They cannot cope, because it taxes them so much." They are saying the only solution is to make it part of the education of the school day and then we will be able to control it better, to create better credibility for the program.

Mr. Callahan: I have a supplementary arising out of that. In my riding, we experience heritage languages being taught on Saturdays or Sundays. From your experience, is there an enthusiasm shown by the young people who go to those? Or is it a question of, as with some kids in most things, you have to sort of drag them along to it?

Dr. Najjar: I must tell you from my own experience it is the parents who have the largest amount of energy and they convince their kids all the time: "This is good for you. You do not realize it now, but in the future you will see its value." They give them psychological pointers. "Your grandma is coming next year and you will be able to talk to her," and so on. But aside from that, the convictions of the parents are so great that they create some sort of sense of community. For example, they come on Saturdays and wait two or three hours for their children to come out from the classes. They discuss what they can do, what sorts of events they can create so their children would keep up the language. It is a fantastic sense of community. I imagine that it would be much greater if it were during the school day where more parents would get this excitement and realize how important that it.

Mr. Callahan: I am sorry. I know we are late and running out of time. Part of the positive aspect of them coming out on the Saturday and Sunday is it was a supportive effort demonstrated to the child that these parents cared enough to do that.

Dr. Najjar: That is right. Exactly.

Mr. Callahan: In my community, it also provides an opportunity for those adult parents to get together, as a community, and celebrate what is going on in the community, too, which might be lost.

Dr. Najjar: That is correct. I just want to say that is an interesting conclusion. May I answer, it? This possibility is an interesting conclusion. I would like to say that the response or the scope of the response of parents to Saturdays and after school is very limited. So if you put it in the school day, it would be much more intensive and more people would take advantage of it. They would realize it is a subject of worth. If it is recognized by the ministry and is part of the curriculum, people would take much more time to be involved. It is simply that the involvement would take a different aspect. The element I mentioned, again--the derision or the fear--that sort of thing--would no longer be there and would create a better atmosphere for language acquisition, maintenance and development.

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Mr. Grande: May I ask a supplementary?

Mr. Chairman: Very short.

Mr. Grande: Very briefly to Mr. Callahan. Perhaps he has given us an idea of an amendment to this legislation to make sure that the after school program does not disappear as a result of Bill 80 coming on stream. That would be acceptable.

Mr. Chairman: Certainly we can deal with that if we ever get to clause by clause; that is, entertain any amendments like that.

Mr. Callahan: Is that called a hook?

Mr. Chairman: I think it might be.

Dr. Najjar, thank you very much for attending. I am glad you had a chance to present your opinions.

Our next presenter is Erhard Hoffmann, who is here representing the German-Canadian Congress. Members are just about to receive a copy of his brief.

Welcome. You have a pretty meaty presentation for us, Mr. Hoffman, so maybe you should get into it right away

GERMAN-CANADIAN CONGRESS

Mr. Hoffmann: I would like to recognize that we have here the principal of the German Language School from Kitchener, Klaus Luecke; and Eberhart Huettenschmidt, who is the vice-chairman of the German Parents' Association of Toronto. In addition, we have members here from the German-Canadian Congress.

Mr. Chairman: Welcome to you all.

Mr. Hoffmann: Mr. Chairman and members of this committee, I have the honour to appear before you and to bring to your attention the position of the German-speaking communities. For the record, I have also included statistical material and references as far as the information respecting them could be obtained.

I regret to inform you that the German community of Ontario is deeply disappointed by the position taken by the government and the manner in which the government submitted its yellow paper called Proposal For Action, Ontario's Heritage Languages Program. Since the proposal deals only with after-school programs, weekend programs, etc., one has to question the sincerity of this kind of paper and this kind of approach, especially when seen in the light that the law permits the government to regulate what is commonly known as the five-hour school day.

Any regulations above would, in our opinion, require the revision of the Education Act. Since this has not been done, the proposal is, at least in part, ultra vires. We also do not wish to have our children treated in a manner as if they were a burden to this society and they could conduct their linguistic or cultural maintenance in evening or weekend programs, or in church basements for that matter. These are Ontario children; they deserve better. They are also our future. So to us, the yellow paper, is indeed a yellow paper and a betrayal of our entrenched rights.

Canada's third largest group, the German-speaking communities, one of the founding peoples of Ontario, have been harassed, intimidated and persecuted like few other communities. The language maintenance, in face of these conditions of continuous persecution, speaks for itself. The German-speaking communities have maintained their language by only 38 per cent, compared to the French community with approximately 97.7 per cent, the Italian community with 79 per cent, and the Ukrainian community with 46.7 per cent, according to Statistics Canada.

These figures speak for themselves. They are also an indication that the assimilation process or the wilful destruction of our culture and linguistic ability of minority languages has gone too far. The threshold of tolerance has been surpassed. We are therefore no longer able to exchange mere niceties, because if we tolerate any more betrayals or careless government policies, we will face, no doubt, cultural and linguistic annihilation.

Irresponsible acts instead of language maintenance and the progress of continued assimilation of several members of our communities are no longer acceptable because they are, in the outcome, irresponsible, dangerous, if not even criminal.

What we have before us is a discussion on Bill 80. Bill 80 is, in many aspects, a harmless concept that could have passed in the Legislature a long time ago because it would have been a step in the right direction. It would have been an indication to the many linguistic communities that they are not forgotten, that the government cares for all and not just for a few. There were many discussions and many meetings dealing with Bill 80. Until today, little, if anything, has been accomplished.

All communities are aware that the Education Act needs urgent revision. Some even feel that the Education Act has been and still is an instrument of minority language oppression, for it is destroying the culture of communities and continues to violate the rights of minorities and here, in particular, the rights of those who cannot speak for themselves--the rights of the children of Ontario. It violates their rights because it is an agent for assimilation.

As reported in the Toronto Star on June 11, 1987, the Toronto Board of Education has two systems for assimilating newcomers, and trustees are getting ready to choose one or the other. Some of us had hoped that there would be light at the end of the tunnel, yet the process of assimilation continues. How much longer are we expected to sit on the sidelines when the language and culture of our communities are systematically being destroyed day by day? Is this what multiculturalism is all about? Surely, the Ministry of Citizenship and Culture must know; the multiculturalism and citizenship division must know; the Minister of Education must know, and if he did not know, then he should have listened to the voice of the communities that spoke to him in repeated consultations. All pretenses and notions that this is a novum have to be dismissed out of hand because Ontario was never nor will it ever be unilingual in nature, nor will it ever be unilingual in law. Attempts to make it that way cannot be ignored any longer.

Allow me to discuss briefly the historic perspective from the research available. I have found that from the rulings of the Council of Public Instructions in 1851, it can be clearly seen that French and German were at least as important as English, at the time, not to mention the native languages, at the time of Confederation on and thereafter. It was a fact at the time of Confederation, and for this reason, too, all or any attempts to claim that other languages were less important are false. Unilingualism was

not the rule at the time of Confederation. A policy of unilingualism violates the spirit of Confederation and is a betrayal of the people of Ontario.

In 1788, King George III named the entire province of Ontario after the German settlers and affixed his seal to the proclamation of July 24, 1788 at the creation of four new districts which were to become the province of Upper Canada; namely Hesse, Nassau, Mecklenburg and Lüneburg. By the way, Toronto is situated in the district of Nassau. "Nassau", or "Nassauer", however, is today an expression in German for someone who is always out for a free ride, but this is only an aside.

In short, multilingual education continued from Confederation onward. It did not disrupt any schools nor did it put any strain on the education system. It did not hamper English-language development and--I think this is important--it did not do any of the things opponents of Bill 80 claim it would do. No doubt things would have been fine had not someone introduced something similar called the Enemy Alien Language Act. May his little soul be blessed.

1750

What a profound act. It should fill the comical sections for years to come. Unfortunately, it had a very serious and disastrous effect. Some may think the act pertains only to Germans--the war, etc.--but that conclusion is incorrect. The act actually legalizes the destruction and violation of the rights of loyal subjects of the crown. It was a sort of declaration of war on our minorities under the guise of the protection of the crown. It was a good excuse to disqualify some of the founding communities of Ontario too.

Not only did it forbid language, it also outlawed organizations, societies or corporations "whose purpose or professed purpose was to bring about any governmental, political, social, industrial"--listen to this--"or economic change within Canada...or which shall by any means prosecute or pursue any such purpose or professed purpose, or shall so teach, advocate, advise or defend while Canada is engaged in war." The source is the Enemy Alien Language Act.

If someone thinks this does not apply any more, why were the languages and the right to multilingual education not reintroduced a long time ago? One might argue that Canada is not engaged in war. Then may I point out that officially, a state of war still exists with one of the targets of the act; namely, Germany?

Maybe, just maybe, by way of the act, Bill 80 is against the law, and so is the Ministry of Industry, Trade and Technology, the Meech Lake accord--which we have to say something about anyway--and probably most of the powers that govern us now.

The Enemy Alien Language Act did not only outlaw certain organizations; it did something very sinister. It split languages into three categories, and these categories should be of some concern when passing new legislation.

From the outset, I would like to state that German, the language of the founding people of Ontario, is not and was not a foreign language. German is not an enemy language, as the act suggests. However, it is a Canadian language, and for that reason German is an Ontario language. Yet the act claims that "enemy language" means German, Bulgarian, Turkish or Hungarian, and the act defines "foreign language" as any language other than English or French.

Besides defining "enemy language," the Enemy Alien Language Act continues and says they have enemy publications. "Publications" means any book, newspaper, magazine, periodical, pamphlet, tract, circular, leaflet, handbill, poster or any printed matter. "Enemy language" includes especially the following languages, and they elaborate on this now: German, Austrian, Hungarian, Bulgarian, Turkish, Romanian, Russian, Ukrainian, Finnish, Estonian, Syrian, Croatian, Ruthenian and Livonian, according to the Canada Gazette. It is very interesting to note that Austrian is considered to be an enemy language by itself. It is amazing what these honourable gentlemen thought of at the time. What about the Swiss language?

The Enemy Alien Language Act did not only outlaw minority language; it even outlawed the storing of minority-language books, and this is a very serious violation of the rights of the loyal subjects of the crown, living under the protection of the crown. The act was passed as an excuse under strong pressure from persons who wanted desperately to destroy the multicultural fact of our province, and they managed to get support from persons of equal mind a mere 10 days or so before the war was over. Thus, the excuse of the war was used to subdue minority groups.

The Education Act, as it is presently written and in effect, is little more than the continuation of the Enemy Alien Language Act because it has become the instrument of language destruction when language advancement and language knowledge are ever so urgently needed.

Language learning, honourable members, goes hand in hand with the maintenance of minority culture, and it is an addition to good education. It also furthers intellectual power and social happiness. Is it not better to spend money on a child's education rather than on a delinquent? Is it not better to prevent crime than to punish crime?

The present school system in Ontario is not fit to educate children of multicultural background. Strong prejudices, I am sorry to say, exist against Bill 80 and multicultural education. Indeed, some who were in favour, and that includes members of the governing party, agreed with the necessity. The entire House also is in favour of Bill 80, of amending the act; and now, for the sake of convenience, some not only betray their own conscience, they betray their communities. Bill 80 would doubtless be of great public benefit, but there is little point in discussing it unless the members of the Legislature are willing to make the spirit of Bill 80 extensive and adopt it permanently and that requires an act of the Legislature. Unfortunately, the many discussions so far have only led to the yellow paper.

Various answers were given to Bill 80, which were not very appropriate. One red herring is the logistics of the different school boards. Oh, yes, boards mainly resent being told by the ministry that something has to be done for minority language education. Only too often, as an excuse, logistics are brought to the forefront. One cause of this appears to be that there seem to be teachers and trustees, even, in the system who take up school teaching or trusteeship as a convenience. Consequently, they feel no interest or have little interest in the education of minorities. The people support Bill 80. The communities support Bill 80. No doubt, the process of assimilation has to stop.

Universal cultural maintenance should be guaranteed by law in a multicultural society. Egerton Ryerson, when confronted with similar problems, stated:

"The Pilgrim Fathers conceived the magnificent idea of a free and universal education for all people and amid their poverty they stinted themselves to a still scantier pittance, amid all their toils they imposed upon themselves still more burdensome labours, amid all their perils they braved still greater danger that they might find the time and the means to reduce their grand conception to practice. Two divine ideas filled their great hearts: the duty to God and to prosperity. For the one, they built a church; for the other, the schoolhouse. Religion and knowledge, two attributes of some glorious eternal truths."

Today, culture maintenance and education should be the pillars of our society.

The results of wilful destruction of cultures or alienation from culture are most notable when looking at the plight of our native people, where a disproportionately large number of young people is driven to commit suicide, having lost their culture or at least part of it. The decision-making process is not only disturbed but disrupted, and the value so lost cannot be replaced by money or the notion of possible riches or upward mobility.

1800

Opponents of Bill 80 should take note of these facts and stop being so careless because they are talking about the lives of young Ontarians and young Canadians. So long as our youthful population is deprived of the blessing of education, so long will the broad avenue of vice be supplied with its victims and our courts and prisons be supplied with their youthful criminals.

The Education Act and some of its facets is little more than the extension of the Enemy Alien Language Act, an especially vicious and destructive document. The damage done to many multicultural communities is extremely severe and also documented. It is not only documented but apparently still goes on today. One just has to follow the media, not to mention the books one can still find in some libraries of our Ontario public schools.

The German-speaking community, which also includes the Austrian and part of the Swiss people, up to this date suffered the full weight of past and present hate propaganda, as well as language restriction. In the face of these facts, in the light of the historic rights, and in order to save the German language--this important Ontario language--and culture as part of the multicultural mosaic, it is proposed to set aside a substantial fund for the maintenance, teaching and reintroducing of the German language for those who have been alienated from it. This would also serve as a signal that the destruction of language and culture in a multicultural society is a serious crime.

The figures speak for themselves that the ability to maintain language and culture has been reduced to almost one third in the case of the German settlers and immigrants and to less than 50 per cent in the case of the Ukrainians. It is therefore proposed that a pilot project be created in the form of a bilingual school.

It has become self-evident that a failure to work on the revision of the Education Act is a betrayal of the worst order. We feel so strongly about this that we are convinced something must be done immediately. The alienation of minorities from their language and culture has gone on for too long.

It is now in your hands to free education from illegal and unnecessary

restrictions. Help us so that the Education Act can be amended for the better. Help us so that true multilingual learning will be free once again and part of our school system. Ryerson stated: "Give us education, free to all as the sunlight of heaven. Education is the best wealth a nation can be in possession of. It is, next to the love of God, shed abroad in the heart, fitting the young for important stations of society."

Mr. Chairman: Thank you, Mr. Hoffman. Are there any questions that members would like to put before I recognize the reality of time on us? Seeing none, then I presume we may see you again knowing your avid interest in the area.

Mr. Hoffman: Okay.

Mr. Chairman: Did you have a question, Mr. Allen? I noticed your hand started up.

Mr. Allen: I wanted to get the reaction of Mr. Hoffman to an observation that I would like to make with regard to the point on page 2. On the one hand, I understand the point you are making and I agree with the effect both of the history you have recounted, of the oppression of multicultural groups and their languages in particular in Ontario and Canada. At the same time, would you endorse the argument we have heard from some people that even if you were designing a strategy in a multicultural society for promoting the learning of English, you would do well to enhance and reinforce the heritage languages of the people who come here?

Mr. Hoffmann: Developing a strategy for the development of the English language would do well.

Mr. Allen: For promoting the English language.

Mr. Hoffmann: Ryerson had some interesting observations on that. He claimed that children would do well if they would learn English grammar. The English grammar--and I do not have the citation in front of me--would then reinforce and greatly help them to develop their own original languages. English grammar development and development of language go hand in hand, so the reinforcement of English and good language helps.

What we have to see here is that it is very important, first of all, that we reinforce good language in the child. It does not matter what language we reinforce. Then the child will look for the equivalent in another language. The thinking process will follow in that direction. It is of great value that children learn good language firsthand.

Let me elaborate a little bit on that. I have had some experience where some people said, "The first thing is, they should all learn English and just forget about their native language." Someplace in the government offices we have a lady who has a little girl. She is now grown up, she is 18 years old and she is from Bavaria. Now she speaks English, but the mother was convinced she should speak only English with her at home. Now she speaks English with a Bavarian accent, but she does not know Bavarian or German.

If then we teach language, good language learning should be firsthand, from first-class teachers, and then we should expand on it and allow the children to expand on it.

In my family, we have the experience of children who, once they were

confronted with language learning, did extremely well. They even grow up, and I am proud to say, learn Chinese, German and French. They do very well in French, and I can assure you they speak fluent English. They have had short of two years of English, and they are doing English so well that they are even in the gifted program.

Language development actually reinforces the thinking process in a child. I think we would all be well advised, from this aspect alone, from the aspect of good education, to give the children the ability to learn more languages. Another thing is, it is important that not only the minorities learn the individual languages, but that other children have the right to learn that language too. I think there is absolutely nothing wrong if an Anglo-Canadian child can pick up the telephone and phone a certain company in Japan and tell them this part on the Toyota is no good. We do not need to have a translator for it.

We should not have all these translation services at the Department of Employment and Immigration, which costs us hundreds of thousands of dollars continuously. We have the language ability here. We have the community that others can learn from and then we can expand on it. It would be an excellent idea of even building up the economic structure in Ontario.

Mr. Chairman: On that note, with our translators worrying about their futures, I have to call things to--

Mr. Hoffmann: This is part of it.

Mr. Chairman: I think we are going to have to recognize the reality of the clock. I am also going to suggest that tomorrow and in future, because we are scheduled for 4 p.m., I or whoever is in the chair will start then. That is whether or not the normal quorum is recognized. Therefore, I would ask each caucus to discipline itself in terms of having its members here.

On that stern note, I would like to thank you very much, Mr. Hoffmann, for attending and giving us such fascinating historical information, besides everything else.

Mr. Hoffmann: Thank you. I have it here. It is in a book documented by the Department of Multiculturalism.

Mr. Chairman: I would love to see it before you leave.

We are adjourned until orders of the day tomorrow.

The committee adjourned at 6:09 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

EDUCATION AMENDMENT ACT

TUESDAY, JUNE 16, 1987



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Baetz

McGuigan, J. F. (Kent-Elgin L) for Ms. Hart

Clerk: Carrozza, F.

Witnesses:

From the Association of Large School Boards in Ontario:

Nelson, F., President

From the Ukrainian National Federation of Canada Inc.:

Luczkiw, M., Executive Member

From the Portuguese Interagency Network:

Aguiar, M., Secretary, Child Education Committee

From the Ontario Coalition of Language Rights:

Derstine, C., Co-ordinator

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, June 16, 1987

The committee met at 4:01 p.m. in room 151.

EDUCATION AMENDMENT ACT
(continued)

Consideration of Bill 80, An Act to amend the Education Act.

Mr. Chairman: I call the standing committee on social development to order. Today we are dealing with Bill 80, An Act to amend the Education Act, a private member's bill introduced by Mr. Grande of the New Democratic Party dealing with the matter of heritage language instruction in the schools of Ontario.

We are hearing deputations from the public for the next number of days. We have also advertised widely, asking people who are interested in expressing their opinions to contact the committee. At the end of these six days of hearings, we will be making decisions about when and if we will meet again to discuss the matter further.

Our first deputation this afternoon is the Association of Large School Boards in Ontario. I see the president, Mrs. Fiona Nelson, has just arrived. If I might, I invite you to come forward and take a seat in front of me. We are actually going to jump the order to give you a second or two, but you are so practised at committees, I am sure you do not need further guidance.

Mrs. Nelson: Thank you.

Mr. Chairman: Basically, the approach we take at this committee is to have you make your presentation any way you would like. Then we open it up for questions. On behalf of the committee, welcome.

ASSOCIATION OF LARGE SCHOOL BOARDS IN ONTARIO

Mrs. Nelson: Thank you very much. I am here as the president of the Association of Large School Boards in Ontario, and my interest in being here is to be helpful. It seems to me the intent of this bill is to benefit children in school, to make sure their language development is not inhibited, that their self-esteem and awareness of their cultural heritage is not impeded or dampened in any way, and that is entirely laudable.

The members of my association are 17 of the largest public boards in this province, and the spectrum of experience of those boards in the area of heritage languages and the transition programs and various other things is quite broad and, in some cases, extremely deep as well.

I think I would like to start by referring to my own experience in the 1960s as a kindergarten teacher in the west end of the city of Toronto, where the vast majority of my students were very recent arrivals. Most had arrived the summer before they started kindergarten. In this particular school, most of them at that time were Italian.

It was very obvious that in order to accelerate both their ability to cope with school, which is what kindergarten is for, as well as their introduction to English, it was done mostly through body language, I would say between Labour Day and Christmas. But it was amazing. By Christmas, a vast number of those children were pretty competent in English. I think the main way this was done, of course, is that in kindergarten there is a tremendous amount of activity. Much of what you do, you do in a very nurturing sort of way. It is not an academic program, so it was relatively easy to do this.

This was before the days of lay assistants and that sort of thing. Nowadays it would be much easier.

Mr. Grande: On a point of order, Mr. Chairman: With respect to Mrs. Nelson, the Association of Large School Boards in Ontario has come before us, and I think before we proceed any further we should find out where the members of this committee are. I really am feeling very embarrassed right now by what I see here. Neither the Liberals nor the Conservatives are here, and I really do not know where on earth they are. Since we have no quorum, I do not think we can proceed.

Mr. Chairman: As you may recall, I indicated yesterday I would see a quorum at four o'clock, that we would not have what happened yesterday take place and not start until 4:30. Each caucus was asked to make sure it had representatives here. Mr. Reycraft from the Liberal Party was here a couple of minutes ago. I am not sure where the other representatives are. If you would like, you may certainly request that I see whether there is a quorum here. I chose to see it, as I said I would yesterday. I agree with you that it is embarrassing. I do not think it is appropriate at all.

Mr. Grande: I understand what you are attempting to do. It is proper and right that when people come before this committee, they should not be held waiting for members to get here. At the same time, I think it is out of a sense of respect for the people who come before us that there would be enough people to make a quorum, at least one person from each party present to hear the good presentations being made. It is a very important issue. Obviously, some of us feel more strongly about this than others. That is fine, but at least let us follow some semblance of parliamentary procedure.

Mrs. Nelson: Will we stand down for a while?

Mr. Chairman: If it is all right with you, we will take a brief recess until we have a quorum. You may get yourself a coffee and make yourself at home.

We are recessed until the chair sees a quorum in the traditional manner.

The committee recessed at 4:07 p.m.

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Mr. Chairman: I call the committee back to order. We have a quorum. I thank Mr. Hennessy, who has quickly got himself substituted on to the committee to replace other members we cannot seem to locate at the moment.

We have as our first witness the president of the Association of Large School Boards in Ontario, Mrs. Fiona Nelson, who had begun to tell us of her history as a kindergarten teacher; we are going way back here. Would you like to continue or start again? However you would like to approach it.

Mrs. Nelson: As I mentioned earlier, I was a kindergarten teacher in Toronto in the early 1960s when there were very large numbers of immigrant children coming into the school system. My classes usually consisted of 70 per cent or 80 per cent of children who did not speak English as a first language; most of those children were Italian at that time. It was very obvious to me that in order for children to develop language and self-esteem and have a good feeling about themselves and about school, we needed to deal with that problem with some sensitivity.

It is from that background that I can see tremendous merit in the transition program; that is, in the primary years, a program whereby the children start school in their own language and gradually, over a period of maybe two years, move into English. That, of course, is not a heritage language program; it is a transition program. In fact, it is almost the opposite of a heritage language program because instead of preserving the child's mother tongue, it is using the child's mother tongue to wean him or her into English. It is, however, a very useful idea in the primary grades, which is a very oral program in which the academic content per se is much lower and therefore the need for translated materials and that kind of thing would be lessened.

It is obvious that this bill deals with transition programs, heritage language programs and third languages of instruction, either for credit for the language itself or for teaching other subjects in that language.

Mentioning my own experience in an anecdotal way, part of the problem that arises in any of these discussions is the difficulty people have in keeping straight in their minds transition programs, heritage language programs and language-of-instruction programs. I would suggest that this be made very, very clear, the ways in which the different kinds of programs are intended to apply for different children and in different settings.

Clearly, if you were going to have a transition program in the primary grades, it would be better for it to be in a home school so that the children, getting accustomed to their school, school life and English at the same time, do not have to be moved to another school.

Some of the boards in my association have had a lot of experience with heritage language programs, both the integrated day programs--when they take place during the school day--and weekend and afterschool programs.

Clearly, there is merit to heritage language programs. The price for success in Ontario schools should not be that you have to give up your own culture and heritage, and I think that was the main reason for them. If we want to have children grow up to feel themselves to be truly part of Canadian society, the price must not be anonymity or alienation from their own culture. I think heritage language programs serve that purpose very well.

What worries me and the members of my association is when we move over to the language-of-instruction situation, in which the Ontario curriculum would be taught in a third language. In order for that to happen, there would have to be heavy concentrations of children of a particular linguistic background in order to justify the quite extensive expenditures that would be required for the translation of materials to teach the Ontario curriculum.

When you are teaching the heritage language program, you are using materials and references from the child's home culture, so it is not necessary for these to conform to the Ontario curriculum. However, if you are moving

over to a program fully in the child's mother tongue and using it as the language of instruction, in the higher grades, where there is more academic content, you are talking about a very extensive job of translation of materials, as well as finding teachers not only competent in their subject areas but also having native ability in that language.

I do not say it is impossible. Clearly, in boards with the political will and with concentrations of sufficient numbers of children, it would be possible to do those things. But I would caution you about this being something a lot of boards would have either any familiarity or any expertise with.

That being the case, I think your bill must spell out in much greater detail how the teacher training would be done, because you would be moving from the existing situation of heritage language instructors, who do not have to be certified teachers in Ontario schools, to teachers who would have to be certified. While you might not have great difficulty with Italian teachers, German teachers--in fact, most of the European languages--when you start getting into some of the other languages, you might have quite significant difficulty finding teachers who are both qualified Ontario teachers and who have native ability in the language.

It seems to me that if you are going to legislate that, then it must be made very clear how this is to happen, over what time period and who is going to pay for it, because the translation costs alone are going to be quite significant, particularly when you get into the secondary school programs.

I am aware that a secondary school credit in Polish, Ukrainian, Urdu or whatever is not a difficult thing to do at the moment. In fact, a lot of school boards have such credit programs in the language itself. In an attempt to be helpful to the committee, I would suggest that you be very specific about the purposes of transition programs, heritage language programs and language-of-instruction programs; that you spell out very clearly how they are to be paid for, what the time limits are and to which children these programs would apply.

1620

Part of your problem is a problem not of your own making at all. It is that in the last few years enormous quantities of mandated change have come from the Ministry of Education to school boards. School boards are reeling under these things at the same time as they are wondering how on earth they are going to pay for them, how on earth they are going to train their teachers, how on earth they are going to educate their communities.

When you get into language theory, as I am sure you already have--you have learned far more about language theory than you ever wanted to know and you will be getting much more of it--you have also to bring your communities along in this.

As I am sure you have already found out, there are very entrenched attitudes about language. Language is very much a part of a person's identity. Therefore, people get very defensive about these things. I think it is a very difficult area to move into to get people willing to change, willing to understand what it is you are trying to do. I am sure each one of you who has been a parent and tried to talk to your local school trustee or teachers about reading--how you teach reading, whether you use this method or that--have found it can be a fairly loaded issue. When you inject yet another language

into this whole equation, I am sure you can see why you run into quite emotional reactions.

I would say that the members of my association have a wide variety of experience. They would be willing to share that experience. I will be of assistance in helping to implement programs, but I would suggest that you go at it very carefully to make sure that boards do not feel this is yet another thing they are going to have to respond to yesterday, and if they do not, they are racist pigs or whatever. I am sure you are aware these are the kinds of things that happen when you get into issues that affect, so closely, people's identities.

I wanted you to know that my association is not opposed to the idea of heritage languages, maintaining children's language and culture, assisting them to develop language and a good self-image and to become good citizens, but there are enormous traps here. There are great difficulties and a lot of them are simply logistical. As you know, with appropriate public education and with political will, anything that is logistical can be overcome.

This is a very emotionally loaded question as well and I would urge you to go at it with extreme care so that you are clearly explaining yourselves. It does seem to me that it is terribly easy for people to muddle the three things that you are attempting to do in this bill. Time limits, who pays, how you go about it, those are the sorts of things that would be extremely helpful to people. It is simply this message that I wanted to bring to you so you would know that some of the resistance you may be meeting may be general resistance to change, because there has been so much mandated, some of it is simply jurisdictional and some of it is logistical.

Mr. Chairman: Does the association meet to discuss these kinds of issues and pass resolutions on these matters or develop policy papers, or does it act more as a clearing house for concerns raised by the 17 boards?

Mrs. Nelson: It does both. We are the only trustee association with a curriculum committee and we spend a great deal of our energy on curriculum matters. We have developed position papers on a great many things; we have not yet on this one. What you are getting from me is an informal reading of people's positions in an attempt simply to let you know where we stand and that we would be willing to help in the application of these kinds of programs.

Mr. Chairman: So there is a sort of standing curriculum committee?

Mrs. Nelson: Yes, there is, and there is a member from each of our member boards on it.

Mr. Grande: Thank you, Mrs. Nelson, for the thoughtful presentation you have given us. Actually, I expected a different kind of presentation than I got, so therefore I am surprised, and pleasantly surprised, may I say.

Mrs. Nelson: What were you expecting?

Mr. Grande: Judging from some of the things we have been hearing or seeing in the press in terms of the Ontario Public School Trustees' Association and the teachers' federations--I guess I should not lump ALSBO with the Ontario Public School Trustees' Association, but it is part of the large school boards of Ontario. It seems to me the message you are bringing forward is that your association has expertise in this area, wants to work, wants to work at it slowly, working out the bugs, the problems, but to get on with it. To me, that is a very positive message that I appreciate.

Since the association of large school boards represents the boards that have probably the lion's share of the children in this province who likely would benefit from this kind of programming, do you think the political climate may be such within some of those school boards that they would say: "Yes, we would be willing to take one language group and begin with that. Establish bilingual programs or transition programs or core heritage languages programs, put them in our schools, make sure we have assistance from the Ministry of Education, make sure we have the funding necessary from the Ministry of Education and the expertise that lies within the Ministry of Education at this particular time to set it up, work with that for about a two-year or three-year period, see what the results are, then let us get on with it"? Would some of your boards be responsive to that kind of approach?

Mrs. Nelson: They might well. It seems to me that two or three of our boards are already doing most of what is in your legislation. It has not been mandated, but they have done it voluntarily. I am sure you are aware the York board and the Toronto board have had very extensive language programs of a variety of sorts for some time. In the early 1970s, in fact, I know the Toronto board appealed to the minister to allow a third language of instruction in the transition program and an informal arrangement was made.

I should point out one thing to you. The large school boards in our association are all public boards. In some ways, the separate boards have had even more experience than some of the public boards in this area, and they are not members of our association. That aside, I think there are probably two or three boards in our association that might be willing to undertake such a pilot project.

It would be very interesting, for example--expensive, but interesting--to actually do a research project to see what the academic achievement of children in a heritage language program would be. That would be a very interesting, long piece of research. It would be longitudinal research; it could not be done in a year. I think all these things would be very interesting.

I understand you had Dr. Cummins from the Ontario Institute for Studies in Education here last week. Certainly, he has done an immense amount of work in third-language education.

I think the expertise resides in this province. I suspect we could find teachers with native ability in certain languages who would be certificated teachers in Ontario schools to do it. I think it would be something that would have to be started in a sort of lighthouse project, pilot project way, but I am sure people could be found.

It is not a cheap program we are talking about, especially with older children.

Mr. Grande: I just want to assure you that so far every community group that has come before us has put forward the position that they do not expect that from one day to the next we are going to be moving from a unilingual educational system to a multilingual educational system. That is an impossibility. What they do say is, "We expect some beginning to take place."

While I appreciate that you mention York and supposedly as well the city of Toronto, because the city of Toronto has been the lighthouse in this area for the last 10 or 15 years at least, it seems to me that when we talk about the heritage languages, what we are talking about is doing the five hours of

instruction period, as opposed to the extended day which means the Minister of Education would have to provide some kind of curriculum for it.

Also, in terms of a bilingual kind of programming, we have a lot of information in terms of how the western provinces have established their programs. I understand the Ukrainian-English bilingual classes graduated last year their first grade 12 students who were taught 50 per cent in Ukrainian and 50 per cent in English for all their schooling. Certainly, we are not here with that kind of program in Ontario.

Thanks very much for your presentation. I really appreciate it.

1630

Mr. Andrewes: Mrs. Nelson, you spoke about heritage language instructors as opposed to certificated teachers. What sort of qualifications do the instructors have now as opposed to certificated teachers?

Mrs. Nelson: My understanding is that mainly they are able to cope with a class and they have native ability in the language. The difference, of course, is that a certificated teacher in Ontario must have had teacher training in Ontario, or equivalent standing, and a degree.

If you were using the heritage language as the language of instruction, you would not be following a heritage language program which essentially deals with the heritage and culture of the group--Italian, Greek, Urdu or whatever--you would be dealing with the Ontario curriculum. So the content would be very different, as well as the specific training of the teacher or instructor. There is a third thing that is different; the instructors get paid a great deal less than certificated teachers.

Mr. Andrewes: Some, no doubt, get paid nothing at all.

Mrs. Nelson: Maybe, I do not know. I was not aware of that. I presumed they had to be paid.

Mr. Andrewes: Mr. Grande will vouch for that.

You spoke about an experiment. You called it an expensive experiment. Can you give us some idea of what it might cost to undertake, say, a program for 20 to 25 children, where the heritage language becomes the language of instruction?

Mrs. Nelson: If you were going to provide for those children all the materials that would be necessary to do the Ontario curriculum, the main expense would be a monster translation cost of those materials. If you were able to find a certificated teacher who was competent in the language, you do not have an extra cost, because you would be taking a teacher before a class. It would assume there was a sufficient concentration of children, in the particular school and at the particular level, with whom you could do this. If you had to bus them, you would then have a transportation cost.

A lot of these things are being raised as bugbears. I do not mean to do this. Certainly, I can think of a school in the city of Toronto that is 90 per cent Chinese. It is very easy to do heritage language in that school. You only have one to deal with. There are some schools, however, that have five or six heritage languages in an integrated day. That starts to present you with timetabling problems. If you were going to take that school, with five or six

languages, and make it into five or six mini-schools in different languages, each with the entire program of materials translated into that language, you are then starting to talk about a bit of money.

I still think it might be worth trying. The thing that would be very difficult would be to find a staff and a community where you could do this without ghettoizing these children. You would have to be very conscious of the fact that these children would have to be brought together in ways so they functioned as a community, and not just as separate language groups within the school. This requires sensitivity, probably more than anything else, and the will to do it. Of course, if you can find people to do this, none of these things are problems. The difficulty arises in making sure your communities are on track with this, your teachers are willing and able to do it, and you are able to administer it in a sensitive way--assuming these are children who do not require special education and various other things.

I hate to raise these things because it sounds as though I am objecting. Unfortunately, we do not have a unified school system, as such, any more. We have an enormous variety of programs within schools. You would want to make sure you were not foreclosing those options to the children in these programs. Consequently, that is why I say, as a pilot project, it might be fairly expensive. It would certainly be worth doing to see just what was involved.

Mr. Andrewes: You say, "Unfortunately, we do not have a unified school system." Are you saying this from the standpoint of a trustee, or are you saying it from the standpoint of education?

Mrs. Nelson: When I am talking about a unified school system, I am talking about the fact we now have immersion French. We now have English stream. We now have a tremendous variety of special education, all available within the public system and within the separate system. We also have integrated day, heritage language schools. There are a whole lot of variations and options available to parents at the moment.

I think what we have to be extremely cautious about here is that we do not produce a tremendous number of solitudes for these children, that there are ways we bring these children together and that they are first and foremost Canadian children in a Canadian school. That is where the sensitivity and awareness of how to do it would come in.

Mr. Reyecraft: Mrs. Nelson, following up on Mr. Andrewes's question, first, regarding qualification, certification and remuneration of instructors, is it not true that the boards are pretty free at the moment to establish standards for those themselves?

Mrs. Nelson: There is a grant, as you know, from the provincial government that is supposed to cover the cost of heritage language programs. It does not, however, cover the cost of the programs if the instructors were paid at certificated teacher rates. The rates are significantly lower.

Mr. Reyecraft: The qualifications and the rates are established by the boards, are they not?

Mrs. Nelson: I think to some extent. There certainly are provincial guidelines. It is obvious that boards have a fair amount of jurisdiction over these things, but there are provincial guidelines one must meet in order to get the grants: the number of children in the class, the time and that kind of thing.

Mr. Reyecraft: You said that this afternoon you were giving us the results of an informal assessment of the position of the ALSBO members. Can I try to perhaps pin it down a little bit more on the two most controversial principles of the bill? One is that heritage languages be provided as a subject of instruction within the regular school day, and I would assume that, because most of your members provide that in an integrated day program--

Mrs. Nelson: No, most do not. A couple do. Most have heritage language programs, but they are after school or on weekends. A couple of them do have integrated day programs.

Mr. Reyecraft: I see. Is it your opinion, then, that the majority of the members do support the principle of the integrated day program?

Mrs. Nelson: Not necessarily. In fact, it is not within the experience of most of them because they simply do not have sufficient concentrations of children to have made that even an option to be discussed. There is not, however, widespread opposition to the idea of heritage languages as a program that could be offered to children.

The reason I said it was an informal thing is because it is not within the experience of most of the boards in my association to have had integrated day programs. A lot of them do offer heritage language programs and have a variety of experiences there and do not have strong opposition to the idea of some of these things. Where their concerns lie--and I do want to stress that it is concern rather than opposition--is that they are worried about costs, about logistics and about the immense amount of change that is taking place in the school system right now. It is those concerns and cautions that I was supposed to bring forward.

Mr. Reyecraft: If the concerns about provincial support for providing heritage languages as a subject of instruction were adequately addressed, would there be any further concern on the part of the ALSBO members?

Mrs. Nelson: If it were in the secondary schools and it was simply the language as a language for credit, there is no concern at all. It is in the elementary schools, kindergarten to grade 8, that you start to have quite serious concerns, because that is where you tend to have a teacher teaching all or most of the subjects and you would need all the material translated and you would need a teacher or teachers competent in that language. That is the logistical problem that at the moment we do not see easy solutions for and we also see as being very expensive.

Mr. Reyecraft: Is it not true that the solution to that problem is a lot broader than just a financial solution?

Mrs. Nelson: Oh, yes. Of course it is. Yes, there is the whole teacher availability and training problem. There is community preparedness. I do not think you can do something like this without making sure that your communities understand it and are with you on it, because I think that in order to prevent ghettoization you do need to have very strong community support as well as the political will to do it.

1640

Mr. Reyecraft: You also talked about support for providing a heritage language as a transitional program. The bill, as it is drafted, talks about "providing a heritage language as a...language of instruction for the purpose

of transition to English or French." Of course, the transitional programs are already permitted. Many school boards are using those. Is it your opinion that it should be provided as a third language of instruction then, and should the transitional provision be removed?

Mrs. Nelson: There are concerns that I have already expressed about that. A transition program for a period of one or two years in the primary division is very pedagogically justifiable. It makes a great deal of sense where there are sufficient children of one language to do that. It is when you start dealing with the older children and a no-time-limit kind of thing that there are concerns and worries.

The thing is that if it is a genuinely transitional program, it means its purpose is to gently get children into English without disturbing their own language acquisition and the laying down of language patterns that are important in primary-age children. Once those language patterns are developed and the children are in the junior and senior divisions, then the same kind of program would not be appropriate. It would seem to me that a transition program is primarily for primary school children; that is, kindergarten to grade 3. It is not specific about that, so I am simply raising these as cautions that I would think would need to be addressed more specifically than they are in the bill.

Mr. Davis: Maybe you can just help us to understand one aspect of the heritage language programs. I understand your board was one of the pioneers in some areas. What about the students in the school who are not taking heritage language? In your experience, what does the Toronto board do with that group of students?

Mrs. Nelson: If it is an integrated day program and the heritage languages are being taught during the school day, it is required that there be what is called a concurrent program for those children. That concurrent program is conducted in English and deals with material, subject matter, whatever, but varies greatly from school to school, because it is in the hands of each school to design its own concurrent program. Obviously, you do not do something in the concurrent program that is part of the regular school curriculum, because the children in the heritage language program would be missing something significant that is part of the mandated curriculum from the ministry. So it tends to be forms of cultural programs, enrichment programs, that kind of thing, that are done. When there is an integrated day program, there must also be a concurrent program.

Mr. Davis: Would the enrichment programs be struck in such a way that, say, a person who is having math difficulties might receive some additional help in that period of time?

Mrs. Nelson: Not usually. Usually, they are of a cultural nature, to parallel the heritage language and culture programs. In a given school, if the children in the concurrent program were largely of origin of the British Isles, say, it might quite reasonably be an equivalent to a heritage language problem for them. It can be any number of things, but it is usually in a cultural vein. Remedial programs are quite separate.

Mr. Grande: I would like to clear up one point, because Mrs. Nelson talked about ghettoization. I guess it is a word that is used all the time in terms of these kinds of programs. Is it not a fact that the board of arbitration between the Toronto Board of Education and the Toronto Teachers' Federation found that children are ghettoized and alienated if they are taught

the heritage language after school as opposed to being taught the heritage language during the school day? Was that not a point they made?

Mrs. Nelson: It was a point they raised. I think ghettoization is something that happens because of poor implementation or poor attitudes, whatever time of day the program is taught. I think there are schools and principals and teachers who do an absolutely smashing job of doing this and those children all feel very much part of the mainstream, and there are other places where they are ghettoized whether or not there is even a heritage language program for them, and that has to do with the way they are received and the way they are dealt with by the staff and the community.

I think what is needed in any of these programs to prevent that kind of thing is genuine leadership and a genuine understanding and appreciation for the multicultural character of this province. If you do that, the whole thing is not difficult to do and in fact it can be enjoyable and it can be enriching for everybody. What we are talking about here, however, has nothing to do with money or anything else; it has to do with attitude.

Mr. Chairman: Before you leave, I am presuming what is going to happen with the committee is that these hearings will end next week. Then we will have a day when we will probably decide where we want to go from there, given whatever response we have had from our ads and things at that point. If and when we set that agenda, would it be appropriate for us to make contact with the curriculum committee through you, for some advice and maybe some specific input to get back to us before we meet again on this matter?

Mrs. Nelson: Yes, that would be fine. I should tell you, however, that our curriculum committee will not be meeting again until the fall. It does not meet during the summer. But I think it would be very useful. I cannot see how these discussions would not help everybody.

Mr. Chairman: We are unlikely to meet until September either, so it would be quite possible that we might be able to work it all--

Mr. Hennessy: Maybe not in September either.

Mr. Chairman: As Mr. Hennessy is saying, maybe not in September either. Only a few of us in this room control the elections, and Mr. Hennessy is the only one who really knows when that date is.

Mr. Hennessy: Thank you. I will give you the cheque after; no problem.

Mr. Chairman: If there are no further questions, thank you very much for coming. I apologize that we did not have attendance for you at the time you were scheduled.

Mrs. Nelson: No problem. Thank you very much.

Mr. Chairman: I also remind members that yesterday I said I would proceed at four o'clock, which I did. Unfortunately, we had only two members in the committee at that time, Mr. Reycraft and Mr. Grande.

Mr. Callahan: I was here at quarter to four.

Mr. Chairman: Yes, I know there were some people here before four. I said we would convene at four and we did. I then had to adjourn because we did

not have an appropriate response to a major organization like the association of large school boards.

I will ask again, for Thursday, for each caucus to make sure that at four o'clock we have at least one representative of each here so that we can start on time.

Without further ado, I would like to call forward Michael Luczkiw of the Ukrainian National Federation of Canada. Are you coming as well, Mr. Derstine, or are you coming separately?

Mr. Derstine: I think we will be coming separately.

Mr. Chairman: Okay, we will just consider you part of the same time period, how is that?

You have watched us the last few days, so you know how we operate. Just proceed along and inform us any way you like.

UKRAINIAN NATIONAL FEDERATION OF CANADA

Mr. Luczkiw: Sure. Thank you. My name is Michael Luczkiw, and I represent the Ukrainian National Federation of Canada.

I am wearing a Ukrainian shirt today, not only to display some of the rich diversity of our province but also to help illustrate a subtle misconception that gnaws at the very fabric of our society. This Ukrainian shirt is not a foreign shirt. It is a Canadian shirt, cut from Canadian cloth, sewn and embroidered by a Canadian using Canadian thread. We call it a Ukrainian shirt to distinguish it from other Canadian shirts, but it is Canadian none the less. It is in fact an Ontario shirt.

Far too often we forget to realize that those different facets of our diverse society are indeed an integral part of our province. We forget that the Portuguese are Ontarians; not the Portuguese in Portugal, but our Portuguese. The Italians, the Chinese, are Ontarians. The Greeks are Ontarians. The blacks--our blacks--are Ontarians. Our native Indians are Ontarians. We often forget.

I am an Ontario citizen and a Toronto physics teacher. I speak Ukrainian, the mother tongue of more than 200,000 Ontarians. I speak German, English and French and have some fluency in Italian and Mandarin Chinese. I have also studied a bit of Japanese and Korean. Why are only two of my languages allowed to be used for teaching during the regular school day? Why does the Education Act presently discriminate against most of my languages and the languages of countless other Ontario citizens? How can the government--and you are a committee of the government--pretend to be responsive to the needs and desires of its citizens when it denies them the equal language rights they so desperately seek?

1650

How many years, how many voices, how many tears, how many games, how many hearings, how many reports, before you act in the way you know your heart tells you is right? Tears, anger, disgust. Last week a Portuguese parent, after hearing the latest government proposal--I have heard it called a yellow paper--broke down and poured out her emotions. She felt her children were betrayed by the government. I will quote only one line: "Don't they care about the children?"

As a teacher, I understood what she meant. I have seen the tremendous positive effects on a student when he is made to feel a part of the school and the terrible waste and destructiveness when he is not. We must all work together to ensure our school system makes every child feel the system is his, not just on weekends or after school but during the regular school day. While one can still have some pity for the person who refuses to learn, there are no words to describe the person who prevents or deprives others from learning and no words strong enough to describe the sick feeling of disgust that many citizens feel every time they are denied the right to have their children educated in the language of their choice.

Why does Ontario lag behind other provinces in this regard? In other provinces and in many countries throughout the world, children enter their educational system speaking one language and come out speaking two or three. How is it that Ontario's educational system is one of the few systems where children enter speaking two or three languages and leave barely speaking one? If this sounds like an indictment, it is. Many know, and I am sure you know, that to deny our children something they wish to learn is a crime. Indeed, there are few Ontarians who are so totally blinded by the weak excuses or selfishness to believe otherwise. There are not many.

Can you tell me why high school students have spare periods during the regular day, but must come back after school or on weekends to learn languages? Can you tell me why in elementary school another language cannot be used during art or physical education to help maintain or teach new languages to pupils? Why is it easier to have sex education taught in the regular school day than language education? How is it that those who use the excuse of ghettoization to oppose language programs are against the integration of the language programs within the regular school day so that all children can benefit?

Will it cost too much? I have too much respect for the intelligence of elected officials to think they would be fooled by such penny wise and pound foolishness. The funniest excuse of all, however, must be the hysterical hype about the impossibility of implementation because of the many different languages in Ontario. I have, and I am certain this committee and the public have, the utmost confidence that our educators are not inferior to those of other provinces or other countries and can more than meet the challenge of improving and integrating into the regular school day that which already exists after school or in other parts of Canada, once the discriminatory section of the Education Act has been removed.

In conclusion, if multiculturalism is indeed the policy of our province, let us not remain hypocrites. Our children want to learn. They want to learn not only their mother tongue but also the languages of other Ontarians, for they know the value of this education. To deny this, to sit back and not to act in the face of the opportunity presented by this bill is nothing less than a crime. Let us help our children learn by passing the necessary legislation. All three parties have approved this bill in principle.

You have just heard the statement by Fiona Nelson, from the Association of Large School Boards in Ontario, who also agrees with the principles of this bill and is also willing to help the committee to get the principles set into practice. You also know in your hearts that its principles are right. You have the research, the experience of other provinces and that of local school boards. Ontario has the resources. There is a strong demand.

Let us work together to establish the best possible implementation

policy for our province so that all our citizens can share in the benefits from this legislation. Let us work together to stand firmly behind multiculturalism and move forward, not backward, so that our children are not left behind those of other provinces and other nations of our global village. Let us move forward so that we can proudly boast from the heavens that we have played a key role in moving our province into the 21st century. May God help us conquer the fear and ignorance which prevent us from furthering the needs of our multicultural province.

Mr. Chairman: Perhaps what we will do is confine our questions to you at the moment and then call Mr. Derstine up following and just divide the time in half.

Mr. Grande: I would like to thank Mr. Luczkiw for the presentation and, actually, to say to him and to the Ukrainian National Federation of Canada that this particular multicultural group in our province has been instrumental throughout the nation in pushing for the introduction of these programs in Alberta, Manitoba and Saskatchewan. Of course, the reason they are there in Ukrainian/English is that more Ukrainians happen to be in the western provinces. Of course, here we do not have such a program. Anyway, I would just like to recognize the amount of work and the push that has come from that particular community in this area of language study.

The question is, as I asked yesterday of another deputant, why do you think that here in Ontario we do not have these programs while in the west they do? What are the reasons? What are the factors?

Mr. Luczkiw: Basically, I think there are two reasons: fear and ignorance. These are the two main reasons why this program has not been set up in Ontario. In the other provinces, they have been able to overcome some of the fear by education. The battle was not that easy at first, as we have seen in the French programs here in Ontario. But once that little bit of fear was removed because of the loss of ignorance, once these programs were in place and people realized the full benefits--the people who send their children to French schools in Ontario realize and know the true value of this type of education.

It is because of this that the whole anti feeling toward these schools, originally, has been decreasing. The fear is going; the fear that these schools are a threat to Ontario is diminishing. The more we learn about them, the more our children take part in these classes--the French classes and the heritage classes. We are getting to the point where throughout the communities people are beginning to realize the value of these classes. You will see non-Chinese students in Chinese schools, and non-Italians in Italian heritage classes. They know the value of this extra education, and it brings these students together to help eliminate the tensions that exist. If Ontario introduces this type of policy, I think you will find there will be a great reduction in tensions that exist in this province, perhaps even today.

1700

Mr. Davis: I have a couple of quick questions to help us get our minds around some of the issues we will certainly be having to deal with. Let us deal first of all with the teacher aspect. Specifically, I would like you to comment, if you can--because you come out of the teaching profession--on the concerns that were expressed by the teachers in the Toronto Board of Education when the board moved to the inclusion of heritage language during the extended day. How do we deal with that concern? What do you suggest?

Mr. Luczkiw: Do you mean the concern for the introduction or against it?

Mr. Davis: No. Specifically, they were concerned about the extension of the day.

Mr. Luczkiw: There is a very interesting point raised by the extension of the day. I was teaching high school at that time, and still am, and our school was affected by an extension of half an hour in the school day. Basically, there was almost no peep about this out of the teachers in my school or throughout the board, but once the same half hour was to include the extension of heritage languages, that caused a very big uproar.

Again, I think it is not the half hour per se. It is that same fear and ignorance people have, which for some reason arises when they hear people talk about a language issue, as soon as we get to this point about language. As I said, even sex education does not stir people up as much as the language issue.

For the most part, I believe there must be some fear, and the sooner we get over that, the better it will be for our province.

Mr. Davis: We are addressing the issue as explained by the member for Oakwood (Mr. Grande) in his bill and even by the new ministry guidelines. Can you give us some viewpoint of how you perceive we may be able to address those various ethnic groups that do not meet the numerical requirements and yet want to incorporate a heritage language program?

Mr. Luczkiw: This question about the implementation should not be such a difficult one as it may appear to be. Some of the school boards that are leaders in this field of education have already encountered some of these problems and difficulties, where there are groups that perhaps want to have heritage language instruction but currently do not have the numbers.

I think in many cases they can be solved by taking practical situations, if it is perhaps more convenient. Let us take a case where there might be 15 students in a school and that number does not meet the 25 or 20 required. However, there might be a teacher in that particular school who has the capability to do the studies. The board might just have the capability to provide this process very easily and implement it, even though there is not the right number of students. I think it might be up to the board to implement something like that.

Of course, I do not think anyone would suggest that a board implement a program that cannot be implemented. Even where there might be 25 students or 24 students and there might be a case where at that particular time they do not have the resources to do it, they may have to wait until next year or some time before they can do it.

Mr. Davis: Just envision for me down the road, what do we do with the students who do not participate in heritage language programs? What kind of programs would you envision being provided for those students?

Mr. Luczkiw: Currently, as Fiona Nelson has mentioned, there are various different concurrent programs existing throughout the schools. I think they are designed and chosen for the particular local schools, whatever the local schools feel is of benefit to the local students.

Mr. Davis: My final question is, can you help me by projecting for me how you see the day operating for the heritage language, expressly with respect to Mr. Grande's bill?

Mr. Luczkiw: I certainly hope the committee will at least get into a pilot bilingual program so we can get ourselves under way, so we do not fall behind what the other provinces are doing. As Dr. Cummins had mentioned earlier, there is also a misconception that these heritage language programs, once they have been introduced into the regular school day, push aside some other part of the program. This is totally incorrect because these programs do not substitute for a course or another part of a program. All they do is substitute for the inefficiency in that program; that is, as Dr. Cummins had mentioned earlier, the program without heritage languages is not as efficient as a program with the heritage languages. If you take that entire program and replace it with one where there is heritage language instruction within the regular school day, the students not only learn that one language, but they also improve their skills in English.

Also, because of their added self-confidence and better self-esteem, they do well and better in other subjects in the curriculum.

Mr. Davis: Let me just try to clarify, Mr. Chairman. In the day, would you except the heritage language program, in Mr. Grande's concept, to the students taking, for example, math, history and science in Ukrainian; or would you see it with one or two subjects the youngster is required to take--I am using this for an example, as they do in the French program--40 minutes a day in the heritage language program? How do you envision it being used in the school system? Are you saying the heritage program--and we will use Ukrainian for an example--would have served the requirement to take French, or would you have it like a trilingual system where it is split out somehow in the program so the youngster is taking all three languages? I need to understand how you envision incorporating it.

Mr. Luczkiw: Like I say, one thing it is often good to do is to leave it at the local level. In the prairie provinces they have both types of systems, a bilingual program and a trilingual program. In fact, some of the bilingual programs are really trilingual programs where the students are learning not only English and, say, Ukrainian, but are also learning French. The parents in those provinces are not foolish enough to say, "We do not want French," because they realize the advantage of knowing three languages is even better than the advantage of knowing two languages.

The only question in terms of implementation might be perhaps even to try a few pilot projects: one with a bilingual program, a straight one; one with trilingual programs; one with a fixed amount of time for one language; one in terms of languages in certain subjects. I think it would be very valid to have a pilot program with perhaps two, three or four different types. We can see the results of that and choose which is the best for our province and our particular needs.

Mr. McGuigan: I have a problem in this whole language question. Maybe I represent sort of the backwoods' view of these things, but I come from an anglophone area and studied French for five years. There was only one of those people who went to school with me who could ever speak French and he was one of these chaps who seemed to have a great facility for languages, but he could not do math whatsoever. That fellow, when he was on a fruit farm, if a Czechoslovakian labourer came along and worked with him, in two or three weeks he would be talking the Slovak language, or if a German came along, in just a

short while he would be speaking German. He went into the diplomatic service and then his life was all of these other languages.

1710

But anybody else whom I have known, including my own children--and this includes some people who went on and became professionals, PhDs and so on; obviously not dumb people--other than that one person, I do not know anyone who can speak French.

Mr. Luczkiw: May I explain the reason for that?

Mr. McGuigan: Yes.

Mr. Luczkiw: I lived through the system, in Ontario at that time, where we were one of the first groups to start. We started in grade 4. The French program then was designed so that students could not learn French. There was no way that--

Mr. McGuigan: I would not argue with that. And it worked.

Mr. Luczkiw: It worked. When I went to school here in Ontario, my third language actually was English. By the time I had left the educational system in grade 8, I had completely forgotten and lost all fluency in German, which I had spoken fluently before I entered the system. The only way my Ukrainian fluency was somewhat maintained was the fact that I attended after-school programs in Ukrainian.

As far as French went, from grade 4 to grade 8, I could, after those four years of French, say, "Voici le hockey stick."

Mr. McGuigan: That was part of my point.

Mr. Luczkiw: The only time I basically did start to learn French was at the high school level in grade 9, and I also picked up German in grades 10, 11 and 12. But it was much harder for me to learn those languages as a result of having lost them, rather than to have maintained them.

If I had had the chance to maintain those languages in the elementary school system, my level of fluency would be even much better than it is now. I do not consider myself to be very proficient at languages. Language is a very difficult thing for me. I am also one of these science background people. The only reason that I manage to be able to speak a number of languages, I think, is because, at a very early age, I had the opportunity to speak and learn three different languages, actually before I entered public school. After you learn two or three languages, additional languages become so much easier.

Mr. McGuigan: Are you telling me that teaching methods have changed so that a person would not repeat my sad experience?

Mr. Luczkiw: I tell you I do not really even blame the instructors at the time. I have a sneaking suspicion that this particular system was not designed really to--it was basically a token type of French program where, even with the teacher's full support, it would be very, very difficult to do anything with the language and have true competency of language.

So do not blame yourself. Language is not such a difficult thing to learn if it is taught properly.

Mr. McGuigan: Would you agree that, properly taught, a person would be able to maintain that for the rest of his life?

Mr. Luczkiw: Yes, certainly. It is far easier to maintain a language than to teach a language. You could spend, let us suppose, very little time and effort to maintain what someone already knows rather than to start to teach someone, and the older the person is, the longer it is put off, into senior school or high school, the more difficult it is to teach that person.

We often get diplomats and send them, at the age of 30, 40 or 50 to different countries. Then they have a very, very difficult time, even with the best of instructions and at great, tremendous cost, to learn that language. If they had spent half the effort or even a very small fraction of that effort to maintain the language that those students already have, they would be far better off.

Mr. Callahan: In my riding of Brampton, we have probably one of the largest multicultural communities in Ontario. We demonstrate that once a year in a festival of cultural events.

I do not know whether there is a different view perhaps in Metropolitan Toronto than there is in the riding of Brampton, but I consider our riding to be a city, a metropolitan community. I meet with the leaders of my multicultural members for a breakfast meeting once a month. I specifically put this question to them as to whether or not they were in favour of heritage language as proposed by Mr. Grande, and they said "No."

I, for one, am in favour of learning as many languages as one can. I think it helps you to understand English, because you can understand the derivation, the roots of words and your vocabulary is going to be far superior.

Is Toronto a separate situation from the outskirts?

Mr. Luczkiw: No. I think perhaps the biggest difference, among the people you are speaking with, is the generation. I came through the school system at the time when multiculturalism was established. Before that time, from the people I have met who are currently teachers who were the generation before me, I have the feeling that they suffered a tremendous amount of discrimination and they had to come to terms with themselves and make a decision.

It was very difficult to maintain their language at that time. The heritage programs were not offered as they are now. So many people chose to give up their language. Those of my classmates who did, who lost their culture, found a void inside and tried to fill it with anything that came along--drugs, suicide. How many of my friends committed suicide? Those who did not have the opportunity to maintain their culture. Sorry, I am thinking of one particular friend.

Those people who gave up their cultures found, even in the high schools, that something was missing. They are the ones who, discontented and frustrated with our system, dropped out of school and became more of a burden on our society than a benefit. However, many of those who attended heritage language classes and maintained their cultures in other cities throughout the province, developed good skills and became doctors and lawyers and leading businessmen.

It is a crime to let our children be deprived of their language because language and the sense of one's self are so closely tied together.

Mr. Callahan: I have some more questions but I know we have time problems, plus the fact they keep ringing--those bells you hear in the background, by the way, are by people acting like children. They are constantly calling us out of here to maintain a quorum in the House. It gets a little ironical that people come here to address this committee and they have to be disturbed by those idiots up there constantly ringing the bells.

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Mr. Chairman: Mr. Callahan, I do not know whether we want to get into that.

Mr. Callahan: Sorry. I will take back the word "idiots."

Mr. Chairman: It is a bad day to make this kind of remark, given the fact that I did not have a quorum or a Liberal member here when we were operating earlier on. I am not sure which is more impolite or childish; not to be here for deputations or to be asking the government for a quorum.

Mr. Callahan: I was here at a quarter to four. I had to leave and I came back as quickly as I could, if that is where the comment is directed.

Mr. Chairman: I gave you the information earlier. There were only two members here at the time we got started, even though I had told committee members I was going to start at four. I do not know which is more impolite. That is why it does not usually help to make comments about what is going on in the House against one group or other, when it usually falls on all of us one way or another.

Mr. Luczkiw, thank you for coming before us. I appreciate the time you spent with us.

Mr. Luczkiw: Thank you very much.

Mr. Chairman: Although we made an agreement that we would try to share Michael's time with Mr. Derstine, because we had another scheduled period and we are running a little late, I think what we will do is that, first, I will make sure Margarida Aguiar comes forward from the Portuguese Interagency Network. If we have time remaining, we will hear from Mr. Derstine afterwards.

PORTUGUESE INTERAGENCY NETWORK

Mrs. Aguiar: I was told I was supposed to give you my brief in writing. I have it written out by hand, and I will get it to you typed before the end of the week.

My name is Margarida Aguiar, and I have been asked to speak on behalf of the Portuguese Interagency Network, PIN, which has 40 member agencies and over 35 individual members.

The Portuguese Interagency Network fully endorsed the principles in Bill 80 allowing the study of heritage languages to be incorporated in the regular school day at its annual general meeting in December 1986. Its position is recorded on page 8 of the 1986 annual report, in a letter submitted to the Minister of Education (Mr. Conway) dated December 12, 1986, and in a press release. Copies of all three documents are available, and a copy of my presentation today will be made available to all members of PIN and anyone else who requests it.

I will be speaking as a member of that organization and Toronto's Portuguese community, as someone who has gone through Ontario's education system since the age of five, as an Ontario certified teacher who has worked in education and social services and who is presently working as a research officer at the Ontario Institute for Studies in Education but, most of all, as a Canadian citizen. I will address the issue under a series of topics.

The first one is the child's academic, social and emotional development. Over and over, in education research papers and in many of the Ministry of Education's documents, it is stressed that the child's ability to learn concepts and understand the world must start from his or her reality, particularly in the primary grades. This is outlined in social studies, science, language arts and many other guidelines. Yet when it comes to recognizing the reality of children of minority-language backgrounds, which includes language, culture, home and community environments, the same government that draws up those basic guidelines has shown absolutely no qualms in keeping the child's language out of the regular curriculum.

The academic consequence of that policy is visible in many students. The emotional consequences to the individual, who has a need to be recognized as a person with a history and a place, are perhaps more difficult to test but in some ways more devastating. Many of our students have difficulty when it comes to asserting themselves in mainstream society. I myself have had to struggle with inferiority complexes. Only as an adult have I come to understand where they stem from, and I have worked to try to overcome them.

It is no wonder that when I look at my elementary and high school education, which covers a span of 13 years, where although there is no incident of name-calling or criticism that stands out in my mind, the only times I got a feeling of, "Hey, we exist," were the superficial mentions of historical events in one grade. References were made to the explorers Henry the Navigator, Vasco da Gama, Balboa and Ferdinand Magellan, who incidentally, I learned as an adult, was Fernao de Magalhaes. That they got "Magellan" from that only indicates the closed-mindedness of the writers to the issue of languages.

Unless the languages and cultures of the students are given official recognition, I feel there will be no major changes in these attitudes. I will venture to say that the situation in many classes--not all--has not changed very much.

Second, assessment: There has been a lot of discussion of the issue of assessment of students from minority-language backgrounds. Can you envision a more effective system of assessment than that where students are taught language arts in all relevant languages, i.e. the language of the home, English and/or French, by teachers trained in reading and writing processes--literatures which go across languages--working together and sharing in the assessment of the child along with the parents and experts? Do you think such a system, where possible, would not provide a more effective assessment process? Of course, this requires that teachers teaching languages be trained to do so, which many of our teachers are not.

Third, language learning and language assessment: I am sure that during the course of these hearings, you have heard and will continue to hear from some of the experts and community representatives that learning another language will, in turn, benefit the dominant language. Such findings will justify the teaching of languages to increase any student's understanding of languages and in turn improves one's English and/or French.

An opportunity to learn another language is therefore beneficial to all students and not just those of specific heritage language backgrounds. In the case of students whose home language is not English or French, the issue becomes critical for language development and has been described as necessary for academic survival. I am sure Professor Cummins can give you, if he has not already, the research basis for that, as well as statements to that effect made by other systems of education and international organizations addressing the educational needs of students from minority language backgrounds.

Still on the topic of language learning, you have no doubt heard of the value of heritage languages for Canada's domestic and international relations in the present and in the future. Many cultures have always valued language learning as a necessary part of a classic education.

I will just limit my comment on this point to a statement made at a conference in Toronto by Antonio Tavares, who works for the Ministry of Education in Manitoba. He could not understand how a system of education has invested money in some cases to teach and in others to reteach languages at the post-secondary level and to a lesser extent at the secondary level, when they allow languages that come into their system alive at the elementary level to die, only to try and resurrect them later at a great expense and in many cases with dubious results.

The next point is community schools. The concept of a local community school with active community participation in the curriculum decision-making process and other school activities has been widely accepted, talked about and defended as extremely important for the student's academic and social success by effectively bridging the environments of home, school, community and the wider society.

However, this concept has not been successfully implemented in the case of lower-income and immigrant communities where the student reality may differ considerably from that of mainstream, middle-class society.

Mr. Chairman: I suggest you go a little bit slower. I was just looking at one of our translators, who is probably being really pressed to keep up with you. I am sure we will make time to hear you. Do not worry.

Mrs. Aguiar: Students are not being taught the skills necessary to function effectively, may I point out, in the home, community and society at large, because an understanding of the language culture and values of those environments are a necessary part of the skills needed to function there. You have to educate children to function in the home, the community and in society, not just in Canadian society.

Parents and local communities are not having a voice in the curriculum and decision-making process of local schools. Look at the heritage language issue where parents in communities have been at odds with the local school boards. This is not just an ethnic issue, but an issue of access for all communities and parents, unless, of course, you have the financial resources to bus or chauffeur your kids to a private school.

The government has stated it prefers a rather hands-off policy because Ontario has a decentralized system of education where the local boards are responsible for governing their programs with guidelines from the ministry. If Ontario has a decentralized system, I will risk stating that the original purpose must have been to facilitate access by local communities. However, they, in many cases--I am not saying all--are no longer in close contact with their communities and have created as large a bureaucracy as some government departments.

On the issue of heritage languages and cultures, in many cases the government of Canada has been easier to access for some communities. Something must be put in place to ensure better access by communities and parents. They should be equal partners with teachers, administrators, academics and governments in setting policy for their children's education and, where possible, the children or students should also be involved.

Ontario in comparison to other provinces: Alberta, Saskatchewan, Manitoba and Quebec have all facilitated the process of integrating heritage languages into the regular school curriculum. Given certain conditions and criteria, it is shameful that Ontario, known as the richest province, with the largest multicultural, taxpaying population, backs down from the possibility of implementing integration in the regular school curriculum by at times citing financial or administrative difficulties. Ontario is closer to British Columbia and the Maritimes on the official status of heritage languages within the education system. If the financial excuse has not stopped Manitoba, Alberta, Saskatchewan and Quebec, it should definitely not stop one of the richest provinces, if not the richest province, in the country, particularly since its multicultural population has contributed greatly to that wealth.

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As for implementation and administration difficulties, we are paying very good money to boards and administrators to meet the challenge of educating the population and not to back down from a challenge that, to a good number of them--again, not all of them--is proving to be too difficult. They should want to meet that challenge and open the consultative process on how it can be met to experts, communities, look at other models in Canada and the world and together come up with a solution for Ontario.

Educators have to be able to continually mould a system that learns from the past and addresses the needs of the present, with a vision to what society may look like in the future because when students in our elementary schools today go out into the work force, that reality will be very different from the one we are facing now and we have to be aware of that and plan ahead as much as possible. I have very little about how difficult and large and whatever things are, because you are going to have to constantly change. How else can you educate them to face the world as adults? Languages will more than likely play a role in that future, for they are already playing a role now.

Administrators and educators opposing the principles of Bill 80 seem to be concerned only with the technical difficulties of implementation and the needs of some teachers whose learning and training began and stopped in the 1950s. Unfortunately, some of the young teachers--I am not saying all of them--have internalized the values of that power structure.

Such attitudes of limiting excuses have no place in the business of education, which is definitely future oriented. Teachers, administrators, academics, government personnel, parents and communities must work together and come up with well-based, creative solutions to whatever problems may block Ontario from successfully meeting its educational challenges.

A note on teachers' federations: The time has come for us to look at the human services professions and how they, as individuals and as a group, are carrying out their roles. Although I fully endorse the right to organize as workers to prevent exploitation, some things have to be in place to ensure that they, in protecting their interest group, are not infringing on the rights of those without whom their professions would not exist.

Ontario has made gains in opening the dialogue and attempting to meet the challenge of a variety of issues, such as doctors' and patients' rights, the criminal justice system, the rights of women and children in abusive situations, day care, community access and integration of persons with a handicap. There have been no sure-fire answers, no perfect solutions, but the issues are being tackled, some legislation has been put in place and the process is at least dynamic.

In the case of the language and education rights of minority students, the process has been very frustrating--I have worked in most of those fields, and this has been one of the most frustrating ones--and limited to political tokenism. This will continue to be the case if no mechanism is in place that, under certain conditions, can begin to integrate heritage languages into the regular curriculum where the need has been identified. If teachers' federations oppose such legislation, their interests are infringing on the language and education rights of Ontario's children.

Meech Lake accord--what else? This accord recognizes the historic importance of two "powerful peoples" during Canada's discovery and birth as a nation; namely, the English and French. I have a strong appreciation and respect for Canadian history, with reservations on the unfortunate consequences to Canada's native peoples at the time. At one point, I even considered specializing in Canadian history but decided against it for other reasons. I also continued to work to ensure that my English-language skills do not stop growing and am disappointed that Ontario's school system was unable to teach me to be fluent in French and my parents could not afford to send me away and were also protective. However, my knowledge of Portuguese and Spanish and exposure to Italian as a child have supplemented my limited school experience to give me a comprehension level of French.

Having said that, I will underline to you that the history of Canada is not limited to before 1867 and does not end in 1867. The recent generation of Canadians who have moved Canada into the 20th century have made as much of a contribution, if not more, to defining and building Canada as a modern nation. This history has been made by its many people, languages and cultures. At different stages, they have given Canada what it needed, be it pure physical labour, skilled labour, intellectual and professional contributions or financial investment. These people are asking for official recognition in the Canadian historical process and want to become partners with French and English Canadians in taking Canada to its next step, which includes recognizing languages and cultures in terms of individual rights and their contribution to Canada's role in the world community.

I went through the Ontario school system when heritage languages and cultures were not recognized. At that time, you may not have been aware of the issues, the negative consequences of such a lack and the advantages of meeting that need. Today, you no longer have that excuse. If you choose not to act in favour of the principles of Bill 80, it is because you lack the political will to do so.

Mr. Allen: First of all, I would like to thank Mrs. Aguiar for a very comprehensive and thoughtful brief and to comment that I think the last two presenters have underscored for us in very personal terms the kinds of losses the province and its population have in fact incurred as a result of the virtual suppression of minority languages of people who have come here.

Both of them have also alluded to the remarkable social costs that have attended that process. Each of them has underscored for us not only in terms

of personal survival and growth but also in terms of educational strategies that the use of multiple languages within an educational system where a population has those language bases is the most efficient way to proceed.

I am therefore sorry that a couple of members of the committee who have questioned whether there is not curriculum loss in some mechanical way are not here. Rather, you have underscored the major gains that come as a result.

Could I ask you what your own language experience has been? At what age did you enter the school system? What was your language situation? What kinds of educational structures and language programs were you exposed to, if any?

Mrs. Aguiar: I entered the education system at the age of five. At that time, I had just come from Portugal. I lived in an Italian home, and I went into an English school system. I have always wanted a heritage language program and there was none offered. There were private schools that offered them, but my parents somehow preferred to entrust my education to the public school system and were not prepared to risk going outside or to pay for it outside.

Throughout my elementary years, up until grade 4, my English did not suffer by my parents not speaking English at home. If anything, it probably benefited. I picked up Italian very spontaneously in the home. So when people address the issue of community languages, nonheritage language kids, through exposure and keeping the languages alive in the community, can help.

I was quite fluent in Italian until the age of 12. When we moved out of that community, it gradually atrophied. I have a comprehension of Italian and would have liked the opportunity to have maintained it.

I then took Spanish in high school, because Portuguese was not offered. When I went to university, again, Portuguese was not a subject of a major, so I specialized in Spanish as a way of getting the closest thing to Portuguese that existed. With that, I am more literate in Spanish than I am in Portuguese. I am very fluent in Portuguese on a day-to-day basis, but I always feel inferior. I have worked as an adult and put in a lot of effort to try to build up my Portuguese literacy skills, something I could have had as a child.

I am literate and more dominant in English, both in fluency and professionally in English, both written and oral. In Portuguese, I am quite fluent in the oral and day-to-day language. It has been an extremely valuable language skill for me as a bilingual English-as-a-second-language teacher, as a children's aid family counsellor and in doing work with the mentally retarded outreach with the parents. I can communicate with parents and I can provide them with the information on services in a very accessible language. I have problems with Portuguese professionals and have to depend on translators to write up stuff that I am doing in Portuguese.

I have been involved in doing a videotape in Portuguese for the mentally retarded, and I am presently involved in doing one on wife abuse, which I will do in English and then submit to a Portuguese-speaking person to translate because my skills are not strong enough, although I know enough to monitor the translation process.

In Spanish, I can write, but not as fluently. I married a Spanish-speaking person, so I picked it up that way. My nieces are Italian and we are struggling to try and maintain Portuguese, Italian, French, and whatever, as an issue for the future.

Mr. Allen: That is a fascinating juggling process in languages. It is almost physical, the way you move them around.

Mrs. Aguiar: Yes. I would like to address your comment about the parents whom you asked if they wanted that program. Recently, we were doing some research about parents' attitudes to the heritage language. Teachers and professionals have done a very good job of educating parents about speaking English to their kids and about the detriments of maintaining the language to their educational development. I am not so sure those parents are not victims of the same ignorance that afflicted anglophone communities in terms of their relationship to language.

A lot of work has to be done in re-educating not only English-speaking people but minority-language parents who have internalized the values that have been submitted to them throughout the years.

I work with the mentally retarded, on many occasions counselling a child who has a language problem and other sorts of problems. There have been behavioural workers who have come in with me and tell me, "Oh, this child has this problem, perhaps he cannot be instructed in it. Could you limit your directions to English?"

This is detrimental to the child who has a lot of problems already in learning concepts. We are even limiting them to that basic communication that exists. That still goes on.

The study we did with Portuguese junior kindergarten students where we ask parents where the child has problems in English, some teachers still do tell them to speak in English at home. So that attitude is still there, even though there have been some changes and some talks, and I am sure that those parents probably are affected by that.

Most of us are concerned that learning and maintaining Portuguese will affect English, and all of them really do want their kids to function in mainstream society. They would like to maintain their heritage language, but not at the expense of functioning in the mainstream.

Mr. Callahan: If I might respond to that, these people of whom I was speaking are people who are intricately involved in the carrying out of this cultural festival each year in Brampton and are not just people who stepped back from it. They are people involved in their community. The Ukrainian community has, I think, 38 people out in Brampton and they have a very strong Ukrainian community that emphasizes all of the dance, the culture and so on. You may be right in some areas. I think these people were responding out of fear, perhaps, as expressed by a previous gentleman. That may be true.

I find it interesting. Just as an aside, I was out at a function in my riding which was put on by the Voice of Portugal newspaper, and they gave me a copy of the newspaper and I could read it. I have never taken Portuguese in my life. I have taken French and so on, so I think maybe it works the other way, too

Mr. Grande: The Portuguese Interagency Network is made up of 40 organizations, as you mentioned at the beginning. Does one of those organizations happen to be in Brampton or just Metropolitan Toronto?

Mrs. Aguiar: Most of them are in Metropolitan Toronto. They are beginning this year to do an outreach across Ontario with workshops. They have

done a series of workshops; one in Brampton and one in Hamilton. They are beginning the outreach into Ontario and a lot of links and ties across the provinces. I think they will be doing a workshop in Brampton. It is not a provincial organization, but it is moving in that direction.

Mr. Grande: You mentioned also at the beginning a meeting earlier this year--

Mrs. Aguiar: December, 1986.

Mr. Grande: Were the representatives from these 40 organizations present?

Mrs. Aguiar: All members were asked to be present. The majority of them were present, and the annual report was ratified at that meeting. It is incorporated in the report, at page 8, that we endorsed the principles under (inaudible) there and the letter. It was also passed at the board meeting.

Mr. Grande: Thank you very much.

Mr. Davis: You have heard some of the questions, so you are ready for them. Do you teach elementary or secondary school?

Mrs. Aguiar: I do research at a high school. I do research at Ontario Institute for Studies in Education right now.

Mr. Davis: But you did teach. Was it elementary or secondary?

Mrs. Aguiar: What did I do? I supply-taught and I am a certified elementary and Spanish high school teacher and I taught adults for a year or so.

Mr. Davis: Good. One of the questions that I would like you to comment on, and specifically let us deal with the Toronto situation because that is the one we saw: the Toronto teachers created a great consternation over the fact that they had to extend the day in those specific schools where Toronto extended the day. In fact, I cannot recall, it did not go on strike, but it came close to going on strike and they settled on an arbitrated ruling.

If we move to the integrated system, how do we deal with that full concern that teachers raise? I just want how you suggest we deal with it?

Mrs. Aguiar: How do we deal with it? The extension of the day or without it being extended? If you are making it part of the regular school curriculum, then you either--

Mr. Davis: That is right. It is an additional half-hour that is placed into the school system, which a school board has the right to do.

Mrs. Aguiar: Yes.

Mr. Davis: But the teachers rebelled and they said they did not want to teach--

Mrs. Aguiar: For an extra half hour?

Mr. Davis: That is right, unless they got paid for it.

Mrs. Aguiar: I do not know if I want to address the issue from the teachers' federations or whether the solution is to extend the day or not. However, if they choose to extend the day, teachers are given a spare. Secondly, I think that when teachers go to get their contract, one of the things they apply very strongly to give themselves the salary they get and the days off they get is that they work extra hours after school, on weekends and whatever, and they have a lot. That argument does not hold because you cannot use it once to ask for money and then take it away when they ask you to work another half hour.

I would rather not address that issue. I would rather solutions would come up that would deal with that. Frankly, as to teachers' federations, I had a note on it that says in social services and teachers' federations--I guess I am a member of those professions in some way or another--there was a comment at a class that teachers in many countries are at the forefront of social reform; however, not in Canada.

In some way they are lacking. If they spent one quarter of the time or half of the time fighting for student needs, quality of education, classroom size, job satisfaction and retraining, as they do on salaries, benefits, hours, job security concerns--which I admit are important--I think some of their concerns would be dealt with, particularly job security and job satisfaction. It is the same for other people in social services. I am very much in favour of job security, job conditions and such stuff, but I think there are other issues they should tackle too.

Mr. Davis: You spent a great deal of time from your own personal background and also in your discussion to provide for us an illustration of how important it is that children who come from various heritage communities--

Mrs. Aguiar: All kids.

Mr. Davis: --receive the kind of education in their own language.

Mrs. Aguiar: I did not say just the--

Mr. Davis: With their culture augmented by language and--

Mrs. Aguiar: Yes, an understanding of their own environment.

Mr. Davis: Yes. I would like you to try to help me deal with that group of people who come from the heritage communities who will be denied that which you believe is so important because they do not meet the numerical quotas set by either the policy suggested by the Liberals or Mr. Grande. How do you deal with those groups?

Mrs. Aguiar: Okay. I will address that. I do not think that because you cannot meet the needs of all, you meet the needs of none. I mean, you are presenting a proposal of an after-school program. You do not eliminate the options of after school and Saturdays. Some parents would still want those. You could look at Manitoba and those others. Some of those school boards had the will to be flexible about their numbers and to work it out.

Mr. Davis: I think what in effect is being said, and I do not want to put words--

Mrs. Aguiar: It is a multifaceted approach to the teaching of languages; a local school approach.

Mr. Davis: You have specific criteria laid down about policies, both suggestions by the government and by Mr. Grande. For 20 or 25 students, the program must be implemented.

Mrs. Aguiar: I said I endorsed the principle.

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Mr. Davis: I know, but my concern is now coming down to those ethnic groups that do not match that number quota. Understanding the background that you have just given us on how important it is, what do we do with those communities that, in any specific school, have 10 students? Are we going to deny those students the opportunity that we are providing for those communities in that sector that have more.

Mrs. Aguiar: I tell you it is up to the flexibility and reception of school boards. Also, it is on a pilot basis. If Peel moved towards a movement of language awareness and public education, you will find that other communities will also want to take that language, and that may meet the numbers that they require.

Mr. Davis: So you want to deal with it first as Mr. Luczkiw suggested; that is, to deal with a number of pilot projects out there?

Mrs. Aguiar: In some aspects; in others, no. As I said, in some places in downtown Toronto, your concept of a community school is being infringed upon.

Mr. Davis: Oh, I am quite aware of the concept of community schools.

Mrs. Aguiar: There are schools in Toronto where 95 per cent of the kids are Portuguese-speaking. The parents are saying, "We want it," and you are denying them. You are now denying them heritage language rights.

Mr. Davis: The Toronto Board of Education provides it.

Mrs. Aguiar: Yes, I know, but with lots of hassles and they put a moratorium on it.

Mr. McGuigan: Both Margarida and the previous presenter put a very good case of the emotional problems that people go through. I certainly put a lot of weight to that, but I wonder if we are not talking about two different situations when we talk about Toronto and outside of Toronto.

I want to preface that by giving my own experience, which is in southwestern Ontario, in the farm community, in an area of the country that provides jobs for newly arrived immigrants, where it did not matter whether they could speak the language, because they were agricultural, back-breaking jobs.

I just read a book on the Belgians in Canada. It was really based on the sugar beet industry in southwestern Ontario. The Belgians had migrated, apparently for quite a long part of their history, to the beet fields of France, and then when the industry started here in the 1920s, they came first as migrants and went back in the fall. Then they came as immigrants, worked for a few years for a farmer, then they became sharecroppers and then became owners.

That whole story has been repeated a number of times. Right after the First World War, it was Belgians and Poles. After the Second World War, all those people who were moved from British Columbia, the Japanese people, came in, and then a great number, particularly Dutch. Then there were Italians.

But the pattern of all those people, as they became farm owners, was that they bought a farm where it was available, so they could not go to a certain part of the county which was a Portuguese, Dutch or Belgian part of the county. They found themselves surrounded by quite a mixture of people who spoke English or Belgian or whatever. I suppose you could say these people were bludgeoned, in an emotional sense. They did not have much choice but to jump in and speak English.

Mrs. Aguiar: Okay. I am not saying that all of us have been totally disabled by it. Some of us have pulled through, but we have pulled through with scars, and some of us perhaps are less able to pull through. You are not setting up a system for the survival of the fittest; you are setting up a system for those who can function. You have to take into consideration all the needs of the students, and it will affect some of them much more than others.

Mr. McGuigan: As I said, I appreciate that. But looking at these people, and I have been able to watch them over a considerable number of years; if you go to a college graduation, a high school graduation or whatever, the people who are all in the forefront are people who came from those families. Whether it has been pounded into their heads that they have to get an education or that these people are more ambitious and want to move ahead, you see very few of these casualties that you speak of.

Mrs. Aguiar: The factors that make for success will never just be one factor. This is one of the factors that affects it. I want to share my own experience. I am from the generation of what you could call the 1957 Portuguese coming through, one of the first ones. I will tell you that most of the kids who are very assertive, particularly the men who are extremely assertive, have come to Canada--this is just personal filler, not anything with data or whatever--with high school or elementary education from there and have a basis to come up with their chin up and be very assertive.

My generation of students, which includes my brothers, some very close friends of mine, their brothers and whatever, I notice that most of us, the ones who came through the school--except now the generation may be slightly different--the girls, the boys have somewhat stayed behind. For what reason? Because the parents do not push it? No, the parents were just as concerned, in what has been called the macho society. Who knows if it is or is not? The boys have first choice in education, but they have somehow got more lost because there were more diversions. The girls were closed up at home and they couldn't go out very much. Basically, what they did was study, and some of us made it.

Most of us who made it in that generation have been girls. My brother made it to community college and my friend's brother did not totally make it. Those are not laboratory studies, control groups or whatever. Those are perceptions.

Now, what are the factors? It is from the same home environment. That is not going to turn a negative into a positive because I was not freer; I have suffered some social consequences of that. But my brother, from having been allowed more freedom, did not concentrate as much on education. He is a very bright man, but he did not pursue a university education, despite the push from my parents.

Mr. McGuigan: I guess my own observation of it would be that, in the situation I was describing, the girls suffered more than the boys.

Mrs. Aguiar: In my situation, the girls suffered more emotionally and socially. The boys suffered more academically.

Mr. McGuigan: The point I was trying to lead up to is about the immigrants coming to Toronto. Were they in a different set of circumstances from those of the people that I am talking about and the people that Mr. Callahan was talking about?

Mrs. Aguiar: The ones who are coming now?

Mr. McGuigan: That have come during the last 20 to 30 years. Were they in a different set of circumstances and were these regarded as far more important to them than it has been for others?

Mrs. Aguiar: I am sure the variables do vary. There are some common points, but I am sure there are a number of variables. I am sure maybe some--I do not know--what amounts to the Portuguese pioneers who were the ones who dared to come here when there was not anybody, may be a little more adventurous and gung-ho than those who come when there are families. I am not going to make any very big generalized statements. There are a number of factors that will affect academic and emotional performance, and language in school, acceptance, is one of those variables but not a sure-fire solution to all of their problems.

We are not, all of a sudden, going to implement heritage language programs and think there are no more problems for immigrant kids in the school system.

Mr. McGuigan: I am trying to be sympathetic in trying to find out why people outside of Toronto have had a sort of different demand or different experience from people in Toronto.

Mr. Callahan: That is the concentration of schools.

Mrs. Aguiar: Maybe the local school, maybe the teacher, maybe the--

Mr. Chairman: The clean country air.

Mrs. Aguiar: Who knows.

Mr. Grande: They also receive the--

Mr. McGuigan: That is what I am trying to come at, Tony. I am certainly no expert on Toronto, but do you not have areas in Toronto which would be known as the Portuguese area, and an area known as the Chinese area, where you get more of a congregation of people who are a part of these countries?

Mrs. Aguiar: I also mentioned in my presentation that the school system has not only failed immigrant students, but also low-income, regular Canadian kids. In some ways, some of them have not been able to push through.

Mr. McGuigan: I agree with you on that.

Mrs. Aguiar: The factors are multiple. A socioeconomic factor is

also at play there. I did not make the statement that it just affected immigrant kids, that all immigrant kids were damaged and that more than likely the low-income and immigrant ones were hit with a double-barrel.

Mr. McGuigan: Thank you.

Mr. Chairman: Thank you. Are there any further questions? If not, thank you very much for your appearance with us today. My apologies to Mr. Derstine, for whom we have no time, as the bell tolls for us at six o'clock and that is what time it is. My commiserations to the translators, and I will see you all back here on Thursday.

The committee adjourned at 6 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

EDUCATION AMENDMENT ACT

THURSDAY, JUNE 18, 1987



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitution:

Miller, G. I. (Haldimand-Norfolk L) for Ms. Hart

Clerk: Carrozza, F.

Witnesses:

From the Spanish Speaking Parents Association:

Garzon, A., Member, Executive Committee

From the Scarborough Board of Education:

Noble, C., Trustee

Plue, F. G., Superintendent, Student and Community Services

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, June 18, 1987

The committee met at 4:44 p.m. in room 151.

EDUCATION AMENDMENT ACT
(continued)

Consideration of Bill 80, An Act to amend the Education Act.

Mr. Chairman: I call the committee to order. This is the standing committee on social development. We are dealing with Bill 80, a private member's bill brought forward by Mr. Grande, of the New Democratic Party, which has passed second reading and which is now in the public hearing process. It is concerning the provision of heritage language instruction in Ontario.

We would normally have started at four o'clock, but there is a procedural matter taking place in the House. The bells have been ringing and we have been uncertain as to when that vote would take place, so we were unable to convene ourselves. Now it looks like the vote will not take place until 5:45, so we will continue with the bells ringing mildly in the background and hear the deputants who have come before us.

Our first presenters are from the Spanish Speaking Parents Association, Antonio Garzon. Would you like to come forward? Take one of the seats directly in front of me and the clerk will come and take a copy of your presentation.

I do not know whether you have been watching the way we operate, but generally speaking, you make your presentation in any fashion you would like and then we ask questions. You do not have to use a written text, but if you want something to be in the permanent Hansard, you basically have to read it into the record. Just speak in the normal style. There is a microphone directly in front of you.

SPANISH SPEAKING PARENTS ASSOCIATION

Mr. Garzon: Thank you. Mr. Chairman and honourable members, the Spanish Speaking Parents Association would like to take this opportunity to salute every single member of this present Legislature for the all-party support given to Bill 80. Our special thanks and warm appreciation go to the honourable member of the Legislature, Tony Grande, promoter of this bill. We are extremely glad to be here and to help you formulate, with our ideas, the appropriate changes our society requires today.

We do not think the issue here is only Bill 80 or the heritage issue, as it was called by the Toronto Star in its editorial on June 6, 1987. The issue here is, how are our children going to be able to master the English language in order to function perfectly well in this society as first-class citizens? In other words, what changes do you, members of parliament, have to introduce in order to form a new society where every single citizen is and feels part of the whole? What changes have to be enforced so that a society exists where nobody is an outsider?

To start with, let us bring back to you what was said in this same House.

"The basic all-English approach has obvious limitations in helping the culturally different child to learn. Let us take the case of a four-year-old child who reflects a French or Portuguese or Greek or Italian background, on his first day of school in September. His first encounter is with a teacher, with an adult. The teacher speaks a language that is alien to the child; the child cannot understand the teacher. The question is: How can that child learn in that atmosphere?

"What the child finds is that he himself has not only that particular pressing need of learning the English language and being able to communicate with that teacher, but also there is a pressing need that he has to make use of that language immediately in order to function as a pupil. From that day on, the child begins to drop behind his English-speaking age-mates, who have no difficulty understanding what the teacher is saying. This is the definition of educational retardation. Not retardation because of lack of abilities, but retardation because it is built in within the system.

"The ill effects of this all-English approach show up most dramatically when the culturally different child is in grade 3 or 4 and the scores in a reading achievement test prove that he or she is approximately two or three years behind the expected level.

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"In other words, Mr. Minister, what is the point of testing the culturally different child with the test that you mentioned in your speech, when we know that that child will score low on such tests? Is your intention to further humiliate the child into believing that he is incapable of learning? This situation is really emotionally damaging to that child, because what he sees and understands is that he is failing, that he cannot learn, and consequently he blames himself for the failure.

"It is impossible for him to reason that the failure he encounters is not his fault, but is the fault of a system that is culturally and linguistically biased. Let me make it clear that I am not referring to children who have just emigrated from another country. What I am talking about is 90 per cent of those children who were born right here in Canada.

"The present situation has to be remedied. The implications are really enormous. Bluntly stated, it may be construed that the linguistically and different pupils are deprived, by a monolingual educational system, of their fundamental right to receive an education commensurate with their abilities. Solutions to this basic void in the education of a culturally different child must be found and implemented.

"Throughout the United States of America and in many parts of the world educators, community leaders and governments are turning to bilingual-bicultural education as one possible approach that makes good sense in educating that particular child. By bilingual-bicultural, I mean using the child's mother tongue and culture with either of the official languages."

This quotation, Mr. Chairman, is from the Legislature of Ontario Debates: First Session of the Thirtieth Legislature, November 3, 1975, page 201.

Honourable members, 12 years have gone and still today we are discussing

the same situation. No action has been taken to stop the abuse and to rectify it. To link this laissez-faire attitude with the results gained from this obsolete system, we would like to draw your attention to the national study that Michael Connolly has done for the Ministry of Education of Ontario. This study, yet to be released, shows that Ontario students in grades 5, 9 and 13 lagged behind the average score in general science for students in western provinces. Attached you will find the highlights of the study that were published by the Toronto Star on April 4, 1987, under the title: "Western Students Beat Ontario's at Science." It is the yellow page attached.

It is very significant that all those provinces, British Columbia, Alberta, Manitoba and Saskatchewan have previously adopted--for a long time--this basic approach to education. They allow to those who want it the truly bilingual education, mother tongue and language of the majority or the working language. The results, we think, are there.

Against this intelligent and logical approach to education for our children, what are we hearing in Ontario? The Metro chairman stated: "The new chair of the Metropolitan Toronto School Board, Ann Vanstone, is not amused. She ticks off the 'bombsHELLs' that Queen's Park has been lobbying at school boards in Ontario recently.

"The primary responsibility of the board, comprised of trustees from each of the six public boards within Metropolitan Toronto, is a financial one. But other issues get aired there as well, both formally and informally.

"One that has made the agenda at Metro recently and is high on Vanstone's list of grievances against Queen's Park is Bill 80. It is a highly controversial private member's bill dealing with heritage language. It was first introduced in the Ontario Legislature last June and received all-party support on second reading last December.

"At the moment, school boards are not obliged to provide heritage language programs. But where they are offered, by most boards in and around Metro, for example, third-language instruction is confined to noncore subject areas, such as drama and art, usually outside of school hours.

"By contrast, Bill 80 would force school boards to provide this instruction in core subjects, such as mathematics or geography, if a certain number of parents demanded it.

"Because this moves heritage language instruction into mainstream teaching time and subject areas, Vanstone, a former chair of the city of Toronto board, does not like Bill 80. On behalf of other like-minded trustees within Metro, she describes it as being 'almost impossible to administer' and views it personally as a potential threat to the privileged position of English and French as teaching languages in Ontario schools."

That was published in the Toronto Star on February 26, 1987.

My dear members, when we talk about education, public education in a democratic system, should anyone be so insensitive as to offend the vast majority of taxpayers and in so doing relegate them to feel they are second-class citizens? Maybe we, as parents, were not born here, but our children were born here and they are Canadian citizens. Can we allow those stupid words to be heard and say nothing? We do not want privileges for ourselves, but if for someone the only intelligent way of reasoning is to say that they have privileges and that they feel threatened, let us say

unequivocally that they have stolen those privileges from us because we, as parents, have not given up our sacred rights to educate our children well and have for them all the opportunities or privileges as first-class citizens.

Mr. Chairman, privileges, ghettoization, assimilation, you name it, those are the words we hear instead of profound and responsible actions to avoid the drop-out rate of 40 per cent of secondary school students that are not aiming and striving for excellency in education, because when they are ready to go to university, the education they have received has been so poor that they are unable to achieve this goal. In fact, the statistics regarding functional illiteracy are very well known: 20 per cent all over the country. And, what to say about that 70 per cent of Canada's prison population that is illiterate?

What we would like to hear are those challenging ideas leading us to make the appropriate changes to have a better educated society.

For the privileged, we do not agree that they remain so. For ghettoization, can you name one racial incident among us? Toronto is the light of the world: many and different cultures, many and different languages, many and different religions, all living together with respect for each other. The only dissonant voices we hear come from those who think they have the right to be privileged. Assimilation to whom and to what? To the Italians? To the Portuguese? To the Spanish-speaking ones? To the Ukrainians? To what do you want us to be assimilated? Where are those aristocrats so good and so intelligent whom we should imitate and in so doing lose our identities?

Is there not any other better way to talk about integration and respect for each other and everyone in this society in order to produce a better one? Integration should be the word and privilege should not be. We do not have to look to yesterday but look to our children and be bold enough to prepare the perfect road where they can walk in peace.

1700

In ending our presentation, we would like to tell you the story of the late Lama Yeshe, Tibetan teacher who died in a hospital in California in 1984. This clipping is attached for your perusal. You know that the Buddhists believe in reincarnation; so when Lama Yeshe died, he left instructions to say where he was going to be reincarnated. After the whole process, the child was found in a little village in Spain, a son in the family of a bricklayer. When they took the child to the Dalai Lama and said he could be the reincarnation of the Lama Yeshe, one thing struck me. I would like to draw your attention to what is underlined on the second page: "Zopa Rinpoche thought for a few moments and replied: 'Well we cannot raise him completely traditionally. I expect that he will have three tutors. One will be from Spain and will be in charge of his Spanish studies. The second will be from one of the English-speaking countries, perhaps America. The third will be Tibetan.'"

What a lesson those wise men from Tibet are teaching us about respect to what a new life brings to the world. That golden child is every child. We wish that all of you, makers of laws, remember that a child has a mother tongue and with that language a soul is being created and transmitted.

In this integration we are proposing neither that language nor the soul should be broken, destroyed or adulterated but, on the contrary, we should help every child to reach such an elevated situation from where it will be possible to give the best of himself to the human race.

Thank you very much for your attention.

Mr. Chairman: Thank you, Mr. Garzon.

Mr. Reycraft: If I understand your brief correctly, you support the teaching of core subjects in a heritage language within elementary schools. Is that correct?

Mr. Garzon: Yes. Fully.

Mr. Reycraft: Is it your view that this should be provided in every elementary school where there is a demand for it?

Mr. Garzon: I think the door should be opened to allow the parents who wish to do so to go ahead and do it.

Mr. Reycraft: Do you think there should be any limit on the number of different languages in which core subjects should be taught in one particular school?

Mr. Garzon: Schools offer teaching. I do not see any problem to have some rooms for some kids studying German and English, French and English, Spanish and English. I do not see any problem. As a matter of fact, I am a member of the third-language report that was done by the Toronto Board of Education five years ago. We travelled to Alberta to see the bilingual education there. I met a lot of trustees there, who went with us and showed us classes. We saw classes where the teacher taught German in the morning and English in the afternoon. The children received full, complete education, 50 per cent in German and 50 per cent in English.

Mr. Reycraft: Then, if there was a demand for it in a particular school, you are suggesting that grade 4 arithmetic, for example, could be taught in six different languages.

Mr. Garzon: Yes.

Mr. Reycraft: Do you not think that is going to create some enormous problems in providing staff, in organizing classes?

Mr. Garzon: What I foresee here is that Germans cannot have that overnight. It is a process.

Mr. Reycraft: Why not?

Mr. Garzon: Because we do not have the manpower to go in such a way.

Mr. Reycraft: Then how would we decide whose requests were to be heeded and whose were to be rejected?

Mr. Garzon: It is up to you to develop some kind of guidelines so that they are able to produce a situation where the parents come. Mind you, when we have children, we have to see in front of us 15 or 16 days; I am not going to jump now to change my children from the all-English education they have now to another one. It should be a process that they start.

What we do not want to hear is this thing that we are against the English language or the English establishment or something like that. On the contrary, we think that if everyone respects the mother tongue of the child

and the child is put in such a position that his or her image is adequately respected, then he will develop this kind of bilingual and trilingual ability, and more than that in the future.

I do not see any problems. The only problem will be the teachers. They are able to do that in the current languages for the people of their own culture, and the road should be open for those who wish to have their children educated in Chinese and English, for instance, and to send their kids to an English-Chinese program.

Mr. Reycraft: What if in that same community there were also a significant number of people of Portuguese background or another group of people of Chinese background? You are suggesting the school should respond to all those?

Mr. Garzon: You can imagine it will be more or less impossible to say that school is going to have seven or eight different languages. I think we should look at the school and see where it is, as they have done in Alberta. There is a school where the parents have to bus their own kids to the school because it is there they can learn German or Ukrainian or another language, plus English.

The concept here is that we should avoid saying the school on the corner is going to provide everything. I think education is very important; important enough to say, "Listen, if I have to travel with my child three or four blocks," or more than that, or stations or whatever it is, "I should be able to go there because I want my children educated in such a program."

We have the mentality of saying, "The community is here and the centre is the school, and that school is going to provide every program for every child that is there," from so many different cultures and ethnicities here in Toronto. Then you can hear what we hear, that the administration of this thing will be impossible.

Mr. Reycraft: What do we do in smaller communities, perhaps a town with a population of 10,000, for example, where there are two elementary schools and four or five different ethnic communities? How do we respond in that situation?

Mr. Garzon: They will have to provide some rooms for this program and some rooms will be for the other program. At least, we have to give the opportunity to the parents to decide. Now we have a wall in front of us because they do not believe--all the trustees and the board of education and so on prevent me from doing that.

If I have the possibility to teach my children--they are already old; there is no problem for my children--but if my children were in junior and senior kindergarten, for instance, and I know that in such a school there is a bilingual program in Spanish and English, I could decide to go there with them or I could decide not to do it. But it would be my choice, because as a parent, I think I have the right to choose for my children, not to go where some school board that administers decides for me and so on, and various trustees make decisions with 1,500 votes in their own ridings; I think the parents have to have the right.

Mr. Chairman: Thank you. I think we will try to wrap this up by quarter past, because the vote is at a quarter to and that would give half an hour to each of the two deputants we have. I have Mr. Callahan and Mr. Grande.

1710

Mr. Callahan: I will waive. My questions were answered.

Mr. Grande: Just a couple of questions. Mr. Garzon, one of the things we have been hearing now for the past couple of weeks, both from the Minister of Education (Mr. Conway) and from other Liberal members it seems, is that one of the reasons these kinds of programs cannot take place in Ontario but they could happen in Alberta, Saskatchewan, Manitoba and Quebec is because we have a large number of ethnic minorities in Ontario.

In other words, as the former speaker was asking, what are you going to do in this school, in that school, and that school, if you have six, seven, or 10 different languages that have the numbers? This implies that we are not blessed here in Ontario to have few immigrants or few people who speak different languages. Now, because we are so many, that reason is turned against the people who are here, the 3.5 million Ontarians.

Are you aware of the fact that in Quebec, if 13 kids want to take a class in German, let us say, during the school day, those 13 kids can and a class can get started? I am not talking about bilingual programs here; I am talking as a subject of instruction during the school day. In other words, for 30 minutes or 40 minutes, all you need is 13 kids. Bill 80 talks about 20 kids.

How do you respond to those kinds of questions? We are so many here and we cannot do it because it is going to be chaos if we ever do. How would you respond to that?

Mr. Garzon: First, you, as makers of the law, should state clearly to the people that parents have those rights. Second, how are we going to do it? I think it will be a problem of discussion, one by one, in the schools where such a program appears. It will be a big discussion with the parents and the administrators of the schools.

What I do not see is that a trustee, for instance, in the case of our own riding, is hardly getting 1,200 votes. He sits down there in the board of education or on another board and he is preventing me, as a parent, to educate my children in the way I think they should be educated. The separate school board has something that could be the ideal situation in order to deal with this. That is, they are going to create school councils where the parents are going to have full powers with the principal of the school as to how to run the school population in that school. That, I think, is a very intelligent move.

It could be that here, in this part of the city, I am going to deal with the things that happen in Scarborough. Let the parents of Scarborough discuss the thing and arrange their own problems in the way they should. So what I do not want is somebody from the other part of the city, with 200 or 300 votes, telling the parents of Scarborough that they cannot teach Chinese in the schools, because they do not vote. So the power to the parents.

Mr. Chairman: Great slogan.

Mr. Grande: Would you agree, sir--again, to go back to the question that the former speaker just asked--would you agree perhaps as a beginning to this that it could be decided by the different groups we have in Metropolitan Toronto and in Ontario, that in a particular school or school setting, you could have two languages and two languages only, as a beginning, and in

another school, you could have another language, etc., in order to avoid this conflict or this problem which some people see of having 52 different languages in one school, which you agree school boards should be deciding on--I do not think we here can do that--and the number of children before the program can get started--it may be 20, it may be 30, it may be 100. As a matter of fact, in Alberta they say 100 children before they begin the bilingual program.

Mr. Garzon: My suggestion would be that the board of education should start creating some kind of advisory councils of the different ethnic communities. For instance, if the board decided to put Greek language in the west of the city, it would be stupid, because the majority of Greeks are in the other part, Danforth and Pape, for instance. Let the Greeks come here to the trustees of the board or to the members of the Legislature and say, "We would like to have three or four schools over there where the vast majority is now." The ones who are scattered here and there will have the opportunity to say, "I want to bring my children there," and that will be their responsibility.

Now for the Italians, the Portuguese, the Spaniards, the Germans, you name it, all of them, you create that, but if you members of parliament do not come up with a clear principle that we have those rights, we will never move. Then afterwards, we will arrange everything. It will be necessary in order to manage properly.

Mr. Grande: One last thing, just a very simple comment, because I am interested in the question, and I have asked it many times around here, why is that okay in the west but not in Ontario? The answer I got from the western provinces was: "Many of the teachers in our school system happen to be of Ukrainian background. Many of our trustees in our school boards happen to be of Ukrainian background. Many of our elected politicians at the provincial level happen to be of Ukrainian background and of other ethnic backgrounds."

Therefore, I think the attitude changed because the political system changed as well. The political system integrated people of different backgrounds into it. Perhaps in Ontario it is a matter of time. We will get there.

Mr. Garzon: I am sure.

Mr. Chairman: Mr. Garzon, I have always loved the Spanish language because of the poetic style of it, and I must say that you have infused it into your English submission. I love the line, "That golden child is every child." That is a great line. I love it.

Mr. Garzon: Thank you.

Mr. Chairman: Next, we will hear from the Scarborough Board of Education. Welcome, Ms. Noble.

SCARBOROUGH BOARD OF EDUCATION

Mrs. Noble: This is Frank Plue, the superintendent of our student and community services, under whose jurisdiction our heritage language program would be addressed. He will assist me with any questions.

On behalf of the Scarborough Board of Education, I would like to thank the standing committee on social development for this opportunity to respond

to Bill 80, An Act to amend the Education Act. My name is Carole Noble and I am a trustee with the Scarborough Board of Education. I am very aware of the responsibilities resting with elected officials to respond to the needs of their community and, at the same time, bring wisdom and experience to bear on decisions which will affect the educational system in Ontario.

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I would firstly like to describe for you the process we followed in order to create the response I bring to you today. In January, shortly after the bill received second reading, a group of interested staff members formed a think-tank. Representatives from teaching, administration, the federations and each of the departments within the board came together to study the bill. The intent at that time was not to address the philosophical issues involved in this report, but to consider the implications to a school system if we were required to implement this bill as it presently exists.

Their concerns were debated over the ensuing months, new minds were brought to bear on the subject, and what emerged is this thoughtful response. Before I go through the response with you, I would like to give you a description of the framework we have imposed upon our work. Initially, on pages 2 and 3, we discuss the problems inherent in offering heritage languages as a subject of instruction.

Our second concern, on pages 3 and 4, is around the offering of heritage languages as a language of instruction. In addition to addressing the specific difficulties associated with the implementation of two methods of offering heritage languages, we also have some general concerns regarding the implementation of Bill 80. These we have addressed page 4 through page 6. Our summary on page 6 underscores two major concerns. This is closely followed by the two recommendations of the Board of Education for the city of Scarborough.

Having given you this brief overview, I would like to walk you carefully through our response. Mr. Chairman and members of the standing committee on social development, in respect to offering heritage languages as a subject of instruction--that is heritage languages offered as a curriculum subject during the regular school day--the following issues arise from mandating heritage languages as a subject of instruction within the school day:

1. It appears that Bill 80 mandates that heritage languages programs be offered during the regular school day as a curriculum subject. That is taken from paragraph 277(e)(3) of the bill. In order to make time for an additional subject, two options exist: eliminate something of value from the present curriculum or extend the school day. Neither of these options is acceptable to the Board of Education for the city of Scarborough;

2. It is necessary to offer nonheritage language children a program during the time that heritage language students are studying the heritage language. Boards offering heritage languages as part of the school day have experienced the following programming difficulties. First, if the alternative program is excellent and relevant, the parents of heritage languages children want their children to be involved in the alternative program as well. Second, if the alternative program is less worthy, the parents of nonheritage languages children complain that their children are wasting their time.

Heritage languages as a curriculum subject within an extended school day has become a contentious issue in teacher negotiations in some jurisdictions. First, with regard to curriculum difficulties associated with heritage

languages as a subject of instruction: in many heritage language programs approved curriculum guidelines are not available. The most current curriculum guides in third-language instruction by the Ministry of Education in Spanish, Italian and German are dated back as far as 1968.

Second, few texts are available, and those that are available tend to be very expensive.

Regarding staffing: A sufficient number of qualified--and I stress "qualified"--teachers is not available. No requirements exist in the present regulations regarding credentials or qualifications of heritage language teachers. This will cause severe difficulties in selection of staff.

The following issues arise from offering heritage languages as a language of instruction, which by definition would occur during the school day.

Transition courses: There is no definition in the Education Act of a transition course, thus no method exists for determining when the transition is completed. According to Professor Jim Cummins, director of the national heritage language resource unit at the Ontario Institute for Studies in Education, research indicates that it may take up to seven years for a student with a mother tongue other than English to attain complete fluency in academic English. English fluency would probably be further delayed if the school program were offered mainly in the heritage language at the expense of English.

Heritage language could be the language of instruction even when the subject of instruction is English or French. The public concern being expressed over the lack of literacy in Canada's two official languages might increase if the instructional time in English or French is reduced.

Qualified and certificated teachers capable of teaching the regular subjects--that is, mathematics, science, history, etc., using the various heritage languages--do not exist in sufficient numbers. Therefore, attempting to meet this requirement would weaken the quality of instruction and credit integrity in the regular subjects.

Staffing: If a sufficient number of qualified teachers became available and were hired, a surplus of teachers presently employed could result. Present collective agreements would require revisions to address resultant staffing implications. Few, if any, trained support staff are available. An example of that could be teacher aides.

The Scarborough Board of Education has general concerns regarding the implementation of Bill 80. Bill 80 causes several concerns regardless of whether heritage languages are being offered either as languages of instruction or subjects of instruction.

With respect to administration: Bill 80 appears to mandate a heritage language advisory committee for each heritage language offered by the board. Again, that is from subsection 277g(2). For some heritage languages, it may be necessary to have more than one committee. Much more administrative time and strength would be required to work with the number of advisory committees that could result. The Ministry of Education would require additional supervisory officers to deal with the heritage language advisory committee appeals.

Boards will require more administrative strength to supervise and administer the program. Supervision of staff for which there are no certification regulations and of programs for which there are no curriculum

guides will be difficult. Accountability will be difficult without clear guidelines regarding staff and curriculum.

Organization: If heritage languages programs were offered during the school day in home schools, multilevel, multigrade classes would be necessary. To avoid this problem, busing of students to magnet schools or programs would be a possibility. Busing would take additional time from the regular school day and additional costs would be incurred.

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Accommodation: Attendance patterns might change if heritage languages programs are offered. Accommodation problems could result.

Costs: There are major concerns regarding the escalation of educational costs should Bill 80 be passed. Although they are difficult to estimate, below is a list of the most obvious costs which would be incurred if Bill 80 were to be passed in its present form:

1. Transportation: Whether the delivery model includes itinerant teachers, busing of students to centres for short-term instruction, magnet schools, or a combination of all three, transportation costs will be increased.

2. Developing curricula: At present there are no current ministry guidelines, curriculum documents or course outlines. Curriculum development teams would have to be created in order to develop outlines for teachers to follow.

3. Textbooks and materials: Very little material exists; thus the development of material would be essential.

4. Professional development: It is likely that many heritage language teachers will not be trained and certificated in Ontario and therefore it will become the responsibility of local boards to provide teacher in-service.

5. Staffing: administrative and support staff. Because of appeal procedures and continual interaction with the many heritage language advisory committees, additional administrative and support staff would be required by both school boards and the Ministry of Education.

Heritage language teachers: In order to provide the heritage language program, it will be necessary to hire the requisite number of teachers.

Alternative program: Assuming it will be necessary to operate an alternative program for students not in the heritage languages program by nonregular staff, boards will incur additional staff and instructional costs.

In summary, the Board of Education for the city of Scarborough, although not addressing the philosophical issues involved in this report, wishes to highlight two major concerns.

1. By necessitating the provision of heritage languages programs during the school day, the bill will create serious logistical and staffing problems and have a detrimental effect on the quality of education by reducing the available time for existing school programs.

2. By mandating heritage languages as languages of instruction, the bill would cause major difficulties in staffing, cause serious disruption to

collective agreements and weaken the quality of instruction in regular subjects.

Our recommendations from the Board of Education for the city of Scarborough to the standing committee on social development regarding Bill 80, An Act to amend the Education Act, are as follows:

1. That Bill 80, An Act to amend the Education Act, not be passed.
2. That the timelines established to allow the public to react to the bill be extended in order that the implications of the bill may be more fully considered.

I thank you for your attention.

Mr. Chairman: Thank you Mrs. Noble. The committee will be planning a further schedule of hearings and input, presumably for the fall, subsequent to the response to our advertisements we have placed around the province. So, this would be an ongoing process. This is just the first six days essentially of getting people's views. I have no doubt that we will be going back to the boards and other participants again for further input as we go along, should that process be possible, given elections and things like that which may be in the air.

As we said to representatives of the Association of Large School Boards in Ontario just two days ago, we will in fact try to talk to their curriculum committee about further input back and forth before we finish here.

I still have Mr. Grande on the list. We have eight minutes, I guess, because we are going to have to get up a couple of minutes before the actual vote takes place. So, be as succinct as you can.

Mr. Grande: I do not know whether I should say that I appreciate the brief, but thank you for coming. You mentioned the thoughtfulness of your presentation, but truly what I hear is negativism at its highest point. All I see in the brief is, "It would cause this problem; it would cause this other problem." All you are talking about is problems. Frankly, boards of education are the implementers of programs. I would have hoped that you would have come here to say, "This is how we can implement it."

Mr. G. I. Miller: You have to think of it realistically.

Mr. Grande: But we need these resources in order for us to do so. Let me try to get at it this way. It seems to me that you started with the process of saying, "We want no part of Bill 80," and then you began to ask questions, because you have a whole set of questions here; you have no answers as to why you do not want Bill 80. I am a little disappointed because, in the debate of a committee, we want to go beyond the principle. The principle is acceptable to all the three parties here. We want to go beyond it to say how we can implement this principle. Obviously, we could not do it all at once, but we should have some kind of beginning.

Fiona Nelson, from the Association of Large School Boards in Ontario, was here the other day and talked to us. When you talk about costs, when you talk about teachers, when you talk about all these other kinds of concerns that you were talking about, she said: "These are really red herrings. We could do it if we wanted to. It is an attitude that is not there." Would you agree with that statement?

Mr. Reycraft: That is a generous interpretation.

Mr. Grande: We can get Hansard, because I heard Fiona Nelson specifically saying that.

Mrs. Noble: I would like to respond. Before I make any further comment, I would like to let you know what we do have at the Scarborough Board of Education. You may be aware--and forgive me if I am taking time to explain it--that at the Scarborough Board of Education we do have a program called the ethnic language program, which has been in operation for probably eight to 10 years. In that program, we have 30 ethnic languages, which amounts to about 297 classes in the city of Scarborough. For those classes we do not organize, we do not select the teachers. What we do for the multicultural community that we, admittedly, have in Scarborough--and we are proud of those people--is we let them organize their own classes to teach their language and their culture. We have done that for many years. They are free facilities in the schools. There is absolutely no charge for the use of that. I and the other trustees are very much supportive of that program. But we do not offer the teachers.

What I am saying is really that we are supportive of heritage languages. We happen to call it an ethnic language program, and we feel that is a good program. It has been a priority of the Scarborough Board of Education to develop high-level skills in reading, writing and speaking of the English language. That has been a top priority with our board.

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Mr. Grande: I just want to ask you this question, and I really would need a lot more time to go through point by point in terms of your brief, but is the Scarborough Board of Education aware that these programs that Bill 80 talks about--and Bill 80, of course, is not a perfect bill, it is just a bill to talk about principles. It is a private member's bill. All the i's have not been dotted and t's crossed here. We could amend it. We can make changes, and I would hope that some changes would come to the bill from the Scarborough board.

Are you aware that in Alberta they have instituted these programs? In Alberta there are over 5,260 kids who are taking these programs in the schools in the Edmonton board of education. In Saskatchewan 3,067 kids are taking these programs; in Manitoba 8,431 kids; in Quebec 4,835, and Quebec started only three years ago. Are you aware these programs exist, and therefore, since they do exist, would you not agree that the problems you bring to us in your brief can be solved?

Mrs. Noble: I have heard about the programs. I do not know a lot about them in detail, Mr. Grande; I would admit that. Probably the information I have learned is through the newspaper and comments.

I would still maintain that in Scarborough, with our board, we have the emphasis on fluency in English, in our two official languages. We want all our students to be successful. We feel the program we offer is a good program, our ethnic language program.

Mr. Davis: Could I have a supplementary on that?

Mr. Chairman: Mr. Miller had a question, then you will just have to take one from the top.

Mr. G. I. Miller: The question I was concerned about has been asked and the answer given about the heritage languages being operated at present. In the interests of time, I would defer to my colleague the member for Scarborough.

Mr. Chairman: One of the members for Scarborough.

Mr. G. I. Miller: No, he is a former chairman of the board and I think he did not know the committee was meeting.

Mr. Davis: I would like to extend an apology. I was informed the committee could not meet because the bells were ringing. I do apologize.

The only question I have is a very general question. Perhaps you could make a comment on it. It is my understanding of the Education Act that the minister does not have the power to mandate courses after school. What is done, I think, is perpetuated in a myth--I have to be careful, Mr. Chairman--

Mr. Chairman: Not with me.

Mr. Davis: --a myth that he can mandate courses after school or on Saturdays. I would like you to comment on whether that is reality or not, or will there have to be a change in the Education Act?

Mrs. Noble: To mandate them after school?

Mr. Davis: Does he have that power? Do you believe he has that power?

Mrs. Noble: I would be concerned with the reaction from the parents of the children if he mandates something after school hours. My first reaction would be to how long you can make a school day.

These are young children. I am not a teacher, but from what I know of education, I understand they have a lot on their plate--if I can use the phrase--for young children. If we want our young children to be involved in extracurricular activities, I would have a problem with mandating heritage languages after school.

Mr. Davis: The question I really asked was just to clarify. Mr. Plue may know more about the problem.

Mr. Plue: I am not aware of any section of the Education Act that grants the minister that power at the present time.

Mr. Reyecraft: Are you aware of any section of the act that prohibits the minister from exercising that kind of authority?

Mr. Davis: That is not--

Mr. Chairman: That question is in order.

Mr. Callahan: That is the other side of the coin.

Mr. Reyecraft: Do you not want to hear the other side of the coin? I believe the answer was no, Mr. Callahan.

Mr. Callahan: It was. Yes, I got it.

Mr. Reycraft: I wanted to make sure.

Mr. Chairman: I regret we do not have more time now just because of the way things have worked today, but as I said earlier, I think we will be having an opportunity, barring an election, to have further meetings in the fall and develop another kind of structure for how we may want to go. We will be deciding that next week. I think we will try to advise everybody who has been before us of where we go next so that you can then prepare yourselves.

Mr. Davis: Maybe the deputy could start going over his schedule of when he could come back.

Mr. Chairman: I am thinking in particular that it is very likely that we will decide on another format for where we want to go from here. That is what I presume we will try to do on Thursday, which will probably reinvolve people who have already made some submission. As a person who has opposed the Scarborough Board of Education's position on heritage language for years, I would love a chance to get involved at that time, but I cannot now.

Mrs. Noble: If I could ask a question of clarification, do I understand we would then come back a second time with a presentation?

Mr. Chairman: I think it is possible. One of the things we were also talking about was actually sending out requests for information and opinion on certain questions that we might provide. There are a number of possibilities, which I cannot judge the committee on at the moment, but I suggest we will probably be talking about scheduling new hearings. Maybe deciding on the kind of timetable for where we go with the committee from this point on would be appropriate. We would advise everybody about that, so if you wished to reappear, you could then advise us of that and any other matters that are of concern.

I thank you both very much. We have just been given notice by our whip that we should get upstairs. We had to reschedule the Board of Jewish Education of Metropolitan Toronto for Monday. We will start at 3:45 p.m., barring bells and the like, so perhaps you could advise your caucus and colleagues. Again, it is not my responsibility. Please do so.

The committee adjourned at 5:46 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

EDUCATION AMENDMENT ACT

MONDAY, JUNE 22, 1987



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Knight, D. S. (Halton-Burlington L) for Mr. Cordiano

McGuigan, J. F. (Kent-Elgin L) for Ms. Hart

Clerk: Carrozza, F.

Witnesses:

From the Board of Jewish Education of Metropolitan Toronto:

Witty, Rabbi I., Executive Director

From the National Congress of Italian-Canadians, Toronto District:

De Iuliis, C., Member, Board of Directors

From the Ontario Public School Trustees' Association:

Campbell, S., President

Phillips, W. J., Executive Director

Parry, R., Director of Public Affairs

Pierce, M., Director of Policy and Legislation

From the Chinese Lingual-Cultural Centre of Canada:

Fung, M., President

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, June 22, 1987

The committee met at 3:50 p.m. in room 151.

EDUCATION AMENDMENT ACT
(continued)

Consideration of Bill 80, An Act to amend the Education Act.

Mr. Chairman: I call the committee to order. We are here to discuss Bill 80, An Act to amend the Education Act, dealing with heritage languages. It is a private member's bill introduced by Tony Grande, the member for Oakwood. We have one more day of public hearings following today and we have four presentations this afternoon, so we should get ourselves under way as quickly as possible.

I would like the representatives of the Board of Jewish Education of Metropolitan Toronto to come forward if they would. Rabbi Witty was here the other day when we had bells ringing, so we could not hear him at that time. I am pleased he was able to reschedule for today.

The process we use is for you to make your presentation in any way you like, although anything you want on the record, even if you have it in writing, has to be said orally so that we get it. Then we will have questions following that.

Rabbi Witty: The story is told in Israel that one of the leading comedians once quipped in a nightclub act that on Israel radio the announcer comes on and says that at the sound of the dial tone it will be exactly nine o'clock, or at the latest 10 after. I understand that Israel radio demanded an apology. I guess a quarter to or five to--we are getting there.

Mr. Chairman: We could not demand an apology here.

Rabbi Witty: You would not get it if you did.

Mr. Chairman: That is right.

BOARD OF JEWISH EDUCATION OF METROPOLITAN TORONTO

Rabbi Witty: I am delighted to be here appearing before you today on behalf of the Board of Jewish Education of Metropolitan Toronto, on which I serve as director, and its affiliated schools.

Just as an information piece, the Board of Jewish Education of Metropolitan Toronto represents a population of some 14,700 Jewish children who are enrolled in 16 day schools and some 40 supplementary schools. Those are youngsters who attend a regular registered public school and obtain supplementary language and religious instruction in special schools affiliated with synagogues and service groups in the community.

First, we would like to take this opportunity to commend publicly the initiative taken some years ago by the government of Ontario in introducing

the heritage language program. It continues to serve today as a vital vehicle for the promotion of multilingualism and multiculturalism in Canada.

To be sure, the introduction of such a program is, in my mind, a logical outcome of the federal government's immigration policy. One cannot expect to admit thousands of newcomers to Canada from several score of different national, cultural and linguistic backgrounds without providing, to some degree, for those new Canadians a means by which to transmit their rich heritages to their children and grandchildren.

The heritage language policy and program take into account Ontario's multi-ethnic makeup and reflect the sensitive understanding of the need to maintain intergenerational communication between members of the same family, some of whom were born and educated abroad and others who have been privileged to have been born and raised in this country.

I suggest that the heritage language program has even more value, however, than that which has just been pointed out. It recognizes the need in our global village, to use Marshall McLuhan's term, that it is essential that children develop an early appreciation for the mastery of more than one or two languages, that they cultivate the command of expanded language skills.

In addition, the heritage language program reflects the sound educational idea that children with a mastery of more than one language are academically and intellectually enriched. With knowledge of another language, they possess the key to unlocking yet another literature, yet another culture and yet another bridge for the understanding and appreciation of peoples other than their own.

Going beyond this, support of heritage languages is important for yet another often unarticulated reason. If the language studied is one with which a group of youngsters has a particular affinity or to which they have a family loyalty, their studies make them feel emotionally more secure by virtue of their gaining a knowledge of who they are and whence they come.

Surely members of the committee will remember the well-known refrain from Fiddler on the Roof in which Tevye the milkman explains, singing alone, what is meant by tradition. It is something, he says, that enables one to know just that, who you are and where you come from. Part of one's tradition is also, *inter alia*, the language of one's ancestors.

Finally, one should not lose sight of the fact that the promotion of third language transmission is of major political and practical importance to Canada in its efforts to compete in international markets and assert leadership in international affairs. The heritage language program is a logical first step in conveying to Canadians the political message that the achievement of these goals in the international arena has a language component to it.

I want to take this moment in the presence of the members of this committee to commend those school boards that have introduced heritage language programs in Hebrew, boards to whom the Jewish community is especially grateful. To date, Jewish groups in Metro have been dealing with four public school boards and one separate school board apropos the administration and monitoring of Hebrew language programs. These are the North York, York, Toronto and Peel public school boards and the Dufferin-Peel Roman Catholic Separate School Board.

The relationships between our schools and the public school authorities in each instance have been excellent. Personnel of the various school boards who have been charged with the responsibility of overseeing the Hebrew heritage language programs have shown themselves to be understanding, sympathetic to the goals of the heritage language courses, sensitive to the needs of the diverse ethnic communities, willing to share information, provide assistance and communicate openly and regularly with our heritage language teachers and supervisors.

They have the approbation and sincere appreciation of the organized Jewish community and, I am sure, the sincere thanks and appreciation of others. I believe they deserve commendation from the general community as well, and that is why I take the opportunity here to make mention of this matter.

In so far as Bill 80 is concerned, we believe generally that it is an important and worthwhile piece of legislation and deserves, in principle, adoption by the government of this province. There are, however, a number of observations we would like to make apropos the act as it is formulated currently and several changes that we would propose.

In section 277c the word "student" is defined to mean "any person who has a right to attend a school in a board area in which the person is qualified to be a resident pupil." We understand this definition to imply that heritage language instruction, and hence heritage language funding by the province, should be available to every youngster in the elementary grades without regard to whether that school is a public, separate or independent school.

If the legislation speaks of a student as being anyone with a right to attend school in a board area, then surely this would include a child in an independent school as well. The fact that parents have chosen to enrol their child in an independent educational institution should not matter. If our understanding of the text is correct--and I believe by the plain meaning of that text it is--we applaud and welcome this change.

Let me remind the members of this committee that, shortly after the funding of the heritage language program was introduced by the province, funding was made available for two and a half hours per week over a period of 70 weeks to our Jewish day schools as well as to other independent schools that would take advantage of it. It was only subsequently that the then Minister of Education, Dr. Bette Stephenson, withdrew that privilege from the children enrolled in the Jewish day schools.

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What was and is available to youngsters in the public and separate schools as a matter of right would not be extended by the minister to students in independent schools, including our Jewish schools. The minister decided unilaterally that children in our schools would be reduced to second-class citizenship in this province. Once again, we would welcome the change which is implied in the wording of this legislation.

I call your attention to subsection 277e(2). This portion of the legislation imposes an obligation on school boards to provide heritage language instruction where a group of students resident in the board area numbering 20 or more request such instruction. We fully support such a provision in the Education Act. If heritage language instruction is available

to some children in Ontario, it should be provided to all those who seek such training and not left to the desires of a given school board.

The myopian, at times unjustified, financial conservatism of some school boards should not be a barrier to the offering of such instruction to children. The children should not be deprived of exposure to the learning of their ancestral tongue.

In subsection 277e(3), the draft legislation calls for having heritage language training during the regular school day as one of the options of time during which such training may take place. It seems to me that in so far as Hebrew language classes offered under the heritage umbrella are concerned, it is imperative that a wide degree of flexibility be maintained in the scheduling of classes.

While the draft legislation does indicate that the board may establish "classes at such times and locations as the board considers necessary to meet the needs of the heritage language community," we are particularly anxious that this option be enshrined in the final language of the act. The Hebrew heritage language programs currently offered by the Jewish community in conjunction with local school boards have been established for some years as after-school and weekend classes. Any effort to introduce such instruction during regular school hours would do violence to our existing programs, as well as to those operated by other ethnic communities.

This section of the legislation, as well as others, refers repeatedly to a group of 20 students. I want to bring to the attention of the committee that there are oftentimes within a single heritage language classroom a variety of age and ability levels. We can cite and document examples of five-year-olds and 12-year-olds being lumped together in a single public school heritage language class, making it impossible for serious and sequential instruction to take place. In essence, such an arrangement vitiates any benefits which might be derived from the language classes which are offered. Hence, to speak of 20 students in a class is perhaps a little bit idealistic but unrealistic.

It behoves this committee to consider some formula for the splitting of classes to provide more realistically for the needs of the children in heritage language classes. For example, where the age span is so wide as to undermine, in the view of the school board or the local principal, the entire heritage language that is being offered, provisions should be made that classes be divided so that the age span in any group should not exceed two, or possibly three, years. A corresponding formula for the funding of such smaller classes should also be developed.

In regard to subsection 277g(2), there is one further observation to be made. In this subsection, eligibility for membership on a heritage language advisory committee is restricted to those whose mother tongue is the language in respect of which the committee is established. We believe strongly that such a provision is far too restrictive and possibly discriminatory.

There are second-generation and third-generation Canadians who command the free use of their respective ancestral tongues. They have understandable and justifiable interest in third-language retention and transmission to yet another generation. They should not be excluded from service on an advisory committee. We believe the joint perspective of native heritage language speakers and second-generation and third-generation Canadians who have an interest in a specific heritage language would provide an excellent balance to the makeup of any advisory committee and lend a dimension to the deliberations of such a committee which can only be salutary and beneficial.

Finally, we urge this committee, in settling upon the final formulation of Bill 80, to give consideration to the idea of constituting the various heritage language advisory committees as being composed of both elected and appointed members. In our view, many able and valuable individuals who have great contributions to make to the work of an advisory committee will shy away from entering into the politics and time consumption of an election. Some means should be provided by which these individuals can be co-opted to an advisory committee and have an opportunity to serve.

Let me take this opportunity of thanking the members for allowing us the privilege of appearing before you this afternoon. We look forward earnestly to the passage of Bill 80 and to its acceptance as an integral part of the educational legislation of this province.

Mr. Chairman: Thank you, and thank you for the specific clause-by-clause notations as well. It is always very helpful for us.

Mr. Grande: Rabbi Witty, thank you very much for a great presentation here today. I appreciate it.

I just want to point out a couple of things in terms of funding. Of course, with a private member's bill, I cannot be talking about funding, as you will appreciate, because only government supposedly can spend money, not a private member. Therefore, there is no attempt here at all to come to grips with a funding formula, such as, for example, they have out west; but no doubt that issue has to be resolved.

The other issue that I appreciate is subsection 277g(2). I understand what you are talking about in terms of its being restrictive. Perhaps the words "mother tongue" should not be there. Anyway, I appreciate that, and I understand your point.

One thing, though, that puzzles me is the statement that you make--let me see if I understand you correctly--that having the heritages languages during the school day would do violence to existing programs.

Rabbi Witty: Let me explain. In the case of the Hebrew heritage language programs, the overwhelming majority, not all, in North York, for example, are conducted within the context of afternoon classes that are run by congregations. Youngsters undergo six hours of instruction per week. These hours are on Sunday mornings, and Monday and Wednesday or Tuesday and Thursday afternoons, for example. In some instances, the hours are less than that; there are only four hours.

Where that type of program exists, two and a half of the hours are devoted to language instruction in Hebrew. There is then an add-on of time for instruction in Bible, religious traditions and a whole array of other subjects connected with the Jewish school curriculum. If, for example, the entire instruction were to be moved into the day hours, which is not proposed at all in this legislation, this would create havoc with some of the afternoon programs.

Among other considerations, youngsters are graded in terms of age and, in some instances, ability into certain streams and into certain classes. If suddenly now everybody were to be lumped together in a public school without regard to what background an individual youngster might have, this would create some very serious teaching difficulties.

You would actually have to experience what happens in some of the

classes to fully appreciate that, but our notion is that, if the youngsters are getting a total package of instruction so that a teacher has the flexibility of working part of an afternoon in teaching Jewish history, Bible or laws and customs and then using part of the afternoon in language, that provides a far more salutary type of an instructional approach than suddenly having to have language separated totally out of the program and then trying to condense the rest of the program in a way that would meet the schedules of the schools, the teachers and the youngsters.

Mr. Grande: I do not see that the one is exclusive of the other, that one cannot take place without the other or both taking places. However--

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Rabbi Witty: But I understand the legislation as it is worded, at least the text I have before me, and I assume we are talking about the same one, does talk about the fact that school boards would have the option of conducting those classes either during the daytime hours or, where the board would so determine, it can provide the language of instruction at a time other than during the regular school day.

We are not suggesting for a moment that for those who prefer to have it during the school day or where it is easiest to provide it during the school day, that option should not exist. Quite the contrary. We recognize there will be many instances of youngsters who, for whatever reason, cannot stay on after school or will not report to a second venue. For those youngsters, there ought to be instruction available as an option during the daytime hours.

What we are underscoring is that for our schools and for our youngsters, it would be terribly important to leave open and to enshrine in legislation the currently existing option of having that instruction over weekends and after school.

Mr. Grande: I will let somebody else ask questions.

Mr. Davis: I would like you to comment a little bit further for me on one section of the bill, in both Bill 80 and the government's proposal, which is the number of students in the classroom, and the number of those taking the subject. My question is: What suggestions do you have, understanding that there may be in a given school, let us say 10 parents who want their children to take a heritage language program? That does not meet the numerical requirements. How can we get around that? How would we deal with that?

The organizations that have come before us so far are very large. If you go through the various listings that were presented to us of what is available in Toronto boards, you find 10 students, nine students, 15. Give us a few suggestions.

Rabbi Witty: I have a number of possible approaches, although frankly, I was not addressing that in my formal remarks.

One of the possibilities probably exists right now, and that is to buy those services from a neighbouring board where they exist.

If you are talking about a heritage language that is not available either in the local school board to whom the petition is initially made by a group of parents or in an immediately adjacent school board, you face the

problem of what to do with these 10 youngsters. A request has been made. It is not a request that conforms with the legislation as presently contemplated.

My guess is that if you were to look across Ontario, we would all be in for some surprises. As I recall, there are some 128 different countries of origin for Ontario citizens. I do not know whether this is common information or not, but it was contained in some report that came across my desk from some immigration source or one of the school boards or the Ministry of Education. The inhabitants of those 128 or so different countries speak something in the neighbourhood of 80 or 90 languages, 62 or 63 of which were actually offered under some heritage language rubric here in Ontario. That is a lot of languages.

I suspect that if one were to do a little bit of accounting of the number of classes that are offered, let us say in some of the languages that are spoken by the more numerous ethnic groups--I speak of Italian, Portuguese, perhaps German and a number of others--one would learn very quickly that there are enough youngsters beyond the cutoff number of 20 that is being proposed. If one were to add those up, if we are going particularly on a per capita enumeration basis, as is done by the federal multiculturalism ministry, for example, one could find that the dollars would be sitting right there to accommodate those 10 youngsters in a given school board. It might require a special petition to the ministry so that school board does not have to absorb whatever loss would be entailed in providing instruction to such a small group of youngsters, but that would be one approach.

I might also point out that if one were to do a little bit of research, one would find that in certain sequential options in school boards that now operate, there are youngsters of those numbers and less and those classes are being funded.

In one of my meetings years ago with the director of education of the Toronto school board, the example cited to me was of a series of classes in Latin. In grade 9 or grade 10, 30 youngsters start out with Latin. By grade 11, the number has shrunk to somewhere around 16 or 18. By grade 12, it is down to 10, 11 or 12. By grade 13, you may only have six, seven or eight. But there is a commitment in terms of the sequential option--meaning an option you have to complete in order to get the complete series of years of credit--to pay for that class, which at the tail end numbers only six, seven, eight or perhaps 10 students.

The school board takes that on. When pressed for an explanation, it explained that this is balanced out against classes that number 32, 35 and 28, when in fact the actual teacher-student ratio should be only 20 or 25 to one. It is justified on those grounds. I would submit that similar justification can be creatively introduced for this type of situation as well if the will is there.

Mr. Chairman: On behalf of the committee, I thank you very much for the very helpful suggestions and also for being willing to come back today.

Rabbi Witty: It was my pleasure. Thank you very much.

Mr. Chairman: Our next presenter is from the National Congress of Italian-Canadians, Celestino De Iulio.

Welcome. Take any of the seats directly in front of me, whichever one you feel most comfortable in. Take us through your presentation in any way you

would like, remembering that anything you want on the record should be read into the record. We will open it up to questions after you have finished.

NATIONAL CONGRESS OF ITALIAN-CANADIANS
TORONTO DISTRICT

Mr. De Iuliis: Then we will read all of it. I hope it will not take too long.

The National Congress of Italian-Canadians, Toronto District, has been supportive of teaching heritage languages in our schools for over a decade. Indeed, it was instrumental, alongside dozens of other cultural groups and associations, in urging the Ontario government to adopt the heritage languages legislation in 1977.

At the time the legislation was passed, there was a general sense across the province that a very important step in the right direction had been taken. It had been officially recognized that almost 30 per cent of Ontario's population wished to impart to its children, and thus to future generations of our province, those values which formed the fabric of its cultural heritage. These values, welded to those inherent in the traditional curriculum of Ontario's educational system, would create a more meaningful, a more equitable and a more comprehensive experience for all of us.

Finally, it had been realized that transmitting and retaining the rich multicultural heritage of Ontario meant a commitment to teaching those languages in which the traditions and cultural values of our many communities were kept alive and vibrant. Further, the teaching of heritage languages would no longer be relegated to ad hoc situations in haphazard accommodations. They would now be allowed in the schools, where our children would be taught by qualified teachers paid by the school boards that were sensitive enough to respond to the needs of their respective communities.

However, all was not well. Despite the initial euphoria, it is now clear that allowing heritage languages to be taught in the school system but not within the regular school day has caused a great deal of dissatisfaction.

As the law now stands, those schools which opt for the integrated heritage languages program must do so by extending the school day. This means that both students and teachers are disgruntled as a result of the extra time that must be put in. From the points of view of both the teachers and the students, this extra burden tacked on to the end of the day makes the teaching and the learning of a heritage language seem more like a punishment than a desired and beneficial goal to pursue. In turn, this situation has led to a number of rather serious confrontations between teachers and their boards in the last two years.

At public meetings, at conferences, in official communiqués, during elections and the like, we are told over and over again that Canada's mosaic, its multicultural makeup, its varied and living ethnic traditions, whether they be Welsh, Ukrainian or Korean, are what make our country great, what we should be most proud of, what distinguishes us from the friendly giant to the south. We are constantly urged to preserve these traditions and culturally precious differences. Yet we have still to adopt an educational policy which would make this ideal a concrete reality, an educational policy which would allow the teaching of heritage languages during the regular school day in those schools where numbers and the desire on the part of students warrant it.

The study of two or more languages is beneficial not only to the overall education of our children; but all of society is well served by having a significant segment of its population fluent in more than one language.

In numerous studies all over the world it has been repeatedly shown that a pupil's linguistic ability in the official language increases when he begins to learn other languages. The myth that linguistic interference would diminish proficiency in the main language of instruction has been laid to rest. Yet there are some who would persist in perpetrating it.

To use a heritage language as an interim language of instruction in those cases where plunging a student directly into English or French might prove detrimental is a highly desirable goal to aim for in our educational system. It would provide a period of transition for the pupil and would allow for a more measured, more comprehensible adjustment to a new way of life, not only for the young child, but also for the entire family. This in turn might reduce tensions or conflicts which arise between parents who are initially more attached to their former modes of existence and their children who, under peer pressure, will often opt for the new cultural experience.

Perhaps one of the greatest benefits of heritage language teaching which is often overlooked arises in the economic sphere. For Ontario and Canada to have a significant number of its citizens fluent in the languages of both today's and tomorrow's markets, is a potentially enormous advantage. We have Canadians whose roots go back to China, Korea, Japan, the Philippines, India, to mention only a few. The Pacific Rim is the fastest growing market in the world. In the decades to come, we will need thousands of men and women not only proficient in the languages of this region, but also who have a profound knowledge of the cultures as well. For it will not be merely business know-how which closes deals; it will be equally important to have an understanding of the nuances and minutiae of each specific country, its customs and traditions. We have to begin to prepare now for the future which, to some extent, is already upon us. It would be shortsighted in the extreme to ignore the long-term rewards of heritage languages teaching in our schools.

The National Congress of Italian Canadians, Toronto District, firmly believes that the government of Ontario must do its utmost in facilitating the availability of heritage languages as a subject of instruction in those schools where the numbers warrant it. Further, the teaching of heritage languages must be allowed during the regular school day in order that the maximum benefit can be derived from the program. We trust this government, unlike its predecessor, will not turn a deaf ear to an issue which is so close to the hearts of so many people in our province.

Mr. Chairman: Thank you, Mr. De Iulius. It has been interesting to hear from people of one background making their arguments using other people's ethnicity. I like the idea of an Italian making the Pacific Rim argument for us.

Mr. De Iulius: We are not one of the largest groups but there are lots of us and they are just as important.

Mr. Chairman: I think it speaks volumes. Are there any questions?

Mr. Grande: I have a couple of questions of Mr. De Iulius. I noticed in your presentation today you made no mention, and I do not know why you

should, but I noted you made no mention of the Minister of Education's statement to the Legislature on June 8, 1987, in which, in a nutshell, the Minister of Education decided, or the government decided that they were not interested in having heritage languages programs during the school day during school hours. That is the yellow paper I am referring to. What do you think? What does your association think about that?

Mr. De Iuliis: Let me say that the colour of the paper is appropriate. It is rather timid with regard to the heritage languages. If it is not a step backwards, it is treading water. We feel very disgruntled about the paper. We had been told by the government that it was waiting for a position paper on heritage languages before it made up its mind. It was a long wait for very little; that is our position.

Mr. Andrewes: In the last paragraph of page 2, you talk about "heritage language as an interim language of instruction."

Mr. De Iuliis: Yes.

Mr. Andrewes: The bill, I think, goes a little further than that.

Mr. De Iuliis: It does?

Mr. Andrewes: It provides it as a standard language of instruction, full-time. Are you suggesting maybe the bill goes too far?

Mr. De Iuliis: Not at all. We simply suggested one of the uses of heritage languages as languages of instruction. We think that there should be enabling legislation to allow for the eventual implementation of heritage languages as languages of instruction in the system.

Mr. Andrewes: At whose discretion?

Mr. De Iuliis: At whose discretion? Probably at the discretion of the advisory committees as envisioned in the legislation. Advisory committees, I would presume, will have the experience and good sense to realize that languages of instruction cannot come the first day that the bill becomes law and that we may be looking a few years down the line in order for this to happen province-wide and everywhere it is wanted. But enabling legislation should be there. The ethnic communities, if you want to call them that--I hate that word, but there is no other one--want this legislation. In a democratic society, they ought to be able to have that to which they are entitled, if enough people ask for it.

We ought not to be told, "You cannot have it because there may be some difficulties involved in the implementation." This has been going on every time any kind of change has come about anywhere. When people talked, 150 years ago, about educating everybody, they said: "You cannot do it. Too many backgrounds. It is impossible. People do not have the same intelligence." With the result that the educated and the rare gifted child who learned to read from the womb got an education. The rest of the people suffered. But the people who believed in what was right persevered and we have, lo and behold, a public education system which is working, despite whatever difficulties might be inherent with it.

I think that we have the same difficulty as the problem we had with French immersion, the teaching of French: "We cannot do it. It is hard. There are administration problems." These will be solved, if the will is there to do

it. The only important thing is that we want it. We pay taxes. We are a democratic society. We should be allowed to have what we want, to be given the chance at least at what we want. We need the enabling legislation and that is why we support Bill 80.

Mr. Andrewes: You are suggesting that the language of instruction become part of the curriculum at the discretion of the advisory committee, but not the board?

Mr. De Iuliis: The language of instruction should be part of the legislation. The legislation should allow for the language of instruction in the school system. The implementation of this in the legislation can be left, it seems to me, to some kind of mechanism which will be worked out later on. First let us pass the bill. It seems to me you pass the legislation because it is right. You do not refuse to pass it because there may be some bureaucratic difficulties with it. That is not an argument against doing something.

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Mr. Davis: Just a couple of questions: I want you to telescope for me what you envision a few years down the road. Do you envision the heritage language program students being educated, for example, in Italian to the exclusion of French and English?

Mr. De Iuliis: No, nobody is proposing excluding French or English.

Mr. Davis: Then down the road you envision instruction in Italian would be on the same basis as French, for example, as presently introduced.

Mr. De Iuliis: Why not? I envision my children going to school and being fluent in English, French and Italian, and German because my wife is German.

Mr. Davis: I assume you see this at the elementary level as well as at the secondary level.

Mr. De Iuliis: Hopefully. I do not know whether he will be fluent in four languages in grade 2, but certainly by the time he gets out of grade 8 he should be. I do not see that you could not teach history or geography in the heritage language as opposed to doing it in English once the child has had a number of years in the heritage language. In a subject such as geography or history, he would get the benefit of doing it in that language. He would learn two things at once, reinforcing one and the other perhaps.

Mr. Davis: A student not taking heritage language would take his history, for example, in English.

Mr. De Iuliis: Or French.

Mr. McGuigan: On the same question, I notice you say transmitting and retaining the rich multicultural heritage. I guess I should explain that I come from a part of southwestern Ontario that had non-Anglo-Saxon Europeans almost from the beginning, many of them largely because of the agricultural industry. It was easy for them to get into the agricultural industry without the language, so we have a rich heritage there of Belgians, Czechoslovakians, Polish, etc.

Mr. De Iuliis: You have a lot of Scots down there too, do you not?

Mr. McGuigan: Yes, it is a question whether they speak English or not.

Mr. Callahan: The town was able to absorb a number of them.

Interjections.

Mr. McGuigan: Actually that is Irish, but there are lots of Scottish. I can take a shot at either one of them without being crucified too badly. It has been my life experience living among those people that it seems gradually over time they become integrated and lose the desire to carry on the heritage. I guess there is not the need to do it because their kids are absorbed into the English through their friends, English being the language of commerce and newspapers. They gradually seem to lose it. Do you really see this as a transition period or do you see it as continuing on from generation to generation?

Mr. De Iuliis: First of all, let me address the integration problem, the fact that you come from somewhere and forget who you are and where you came from. I feel very strongly about not forgetting where you came from and who you are. I look at the United States where they talk about the melting pot and you forget your native language the minute you step off the boat; now it is the airplane.

Mr. McGuigan: I reject that too.

Mr. De Iuliis: I think it causes a great deal of psychological trauma in individuals, which is not highly recognized, if you do not know where you came from and who you are. If you have to give up where you came from because of money, because of peer pressure or because your neighbours do not like you to speak whatever you speak, I think you become psychologically displaced.

As an argument for this--it is not an argument I am making but one that has been made in a number of psychological books I have read, books on psychology; psychiatry as a matter of fact--if you look at the United States, it is the country that has the greatest number of psychiatrists per capita in the world. This is not the only reason for it but I suggest it is one of the reasons for it.

Do I envision heritage languages still being taught 20, 30 or 40 years from now? I do. I may be idealistic. I taught Italian in the United States at Syracuse University. We had third-generation and fourth-generation Italians, children whose grandparents or great-grandparents were Italian, desperately trying to learn Italian, going back to Italy trying to reabsorb what had been suppressed for such a long time. It was the only department in the foreign-language division at Syracuse University whose enrolment was increasing.

I do not think we should do that to our kids. We should give them the option to keep going. If it goes on for the next 70 generations, so be it. If two generations from now, our children decide in concert, whether consciously or unconsciously, they no longer want heritage languages, I suggest to you there will be another meeting like this to abolish Bill 80 or whatever

replaces it. They will say: "We no longer have a need for it. Let us get rid of it." Now, there is a need and we should have it.

Mr. McGuigan: I have suggested that the United States, to some extent, is losing that melting pot theory, particularly with the Spanish language coming on there.

Mr. De Iuliis: That is right.

Mr. McGuigan: The melting pot has really failed.

Mr. De Iuliis: It has failed and you can see it. There is legislation and there are senators and people going around trying to make English the official language of the United States.

Mr. McGuigan: Just for your interest, the reason I have never gone back to Ireland is that the most wanted man in the Irish Republican Army is called James McGuigan.

Mr. De Iuliis: No relation?

Mr. McGuigan: I do not know but I am afraid they do not ask questions over there. That is why I have never gone back.

The Acting Chairman (Mr. Allen): That is a piece of information I do not think Mr. McGuigan has ever confided to a committee before. Are there further questions from the committee?

I gather from what you said that you are in favour of a multimodel form of both implementation of heritage languages and the style of delivery of heritage languages so that heritage languages would be available during the school day, after school and on other occasions. It would also be available as a core subject of instruction or a language of instruction and it might also be a language of instruction in a bilingual or trilingual school in which there would be two or three languages as means of instruction. Does that characterize your sense of where all this is leading or do you want to lop off some elements of that?

Mr. De Iuliis: Yes, I would, if you do not mind.

The Acting Chairman: Go ahead.

Mr. De Iuliis: I want to lop off the multidelivery eventually. We want integrated languages in the school day. The argument that something has to be displaced in order to put in a heritage language, in my view, is really not much of an argument for a number of reasons, one of which would be resolved eventually by having heritage languages as languages of instruction. Then you would do history in Italian and you would not lop off history. You would do geography in Italian and you would not lop off geography.

It seems to me the other thing that speaks in favour of it is that we have 13 years in Ontario. In many other provinces, they have only 12 and presumably they get the same education. Lopping off five minutes a day on each subject would give you enough time to do the heritage language, if you wanted to do it. All these things can be resolved if the will is there to resolve them. Give us the enabling legislation and then the kinks will be worked out. The kinks are not that great to start with, but eventually you have to go, as quickly as possible, to integrated programs. When you have integrated

programs, you will not get teachers wanting to go on strike because they have to stay an extra half hour a day and get the same pay.

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The Acting Chairman: I guess what I am asking you is whether even with--I agree totally with your argument for integrated programs. If you still had parents who wished to have less formal programs after school or on Saturdays or in some communities where language concentration make it difficult to offer classes in the school day, would you exclude those?

Mr. De Iuliis: Absolutely not. If the parents insist that the languages be taught after school and that their children are not suffering from it and you can get qualified teachers, absolutely. It is the will of the people who want the program that should be supreme.

The issue, at least for us in Metropolitan Toronto and some other municipalities like Ottawa and Sudbury--two very blatant examples in our experience--is that we want heritage language classes in the regular school day, not tacked on to the end and not put on Saturday afternoons or any other day of the week. If there is a community that says, "We do not want our kids to have integrated heritage languages in the school; we want them to have them after school," are you going to fight the parents? You let them have what they want? The possibility should be there.

The Acting Chairman: I did not hear you use the argument, but earlier last week a fairly extensive paper was given to us that made the point that in terms of international competitiveness, the diplomacy of Canada and so on; the proposal of integrated heritage languages on an ongoing basis, not just as a basis of transition, made a great deal of sense for the future of the country. You have not exactly used that language but I gather from what you have said that is the direction in which your own thinking goes.

Mr. De Iuliis: I think I made the point on page 3 when I talked about the Pacific Rim and the importance of having a large segment of the population trained in the languages of the world in terms of--I was reading a couple of months ago that the federal government sent a diplomat to Japan for two years at the cost of half a million dollars to train him in Japanese. That is a lot of money to train one person to speak Japanese. You can do it a lot more cheaply with heritage languages and you could do it better. Obviously, he is not going to be as fluent as he ought to be after two years in Japan, although he could be pretty good.

It would address a large number of other problems that could arise, would arise, will arise, as we become more and more involved with the rest of the world, as we may have to move away from the United States and trade with other countries. Who knows? It is a very important argument and a very valid one. It is not something thrown in to make things sound good. It makes absolutely good economic sense.

The Acting Chairman: Has the National Congress of Italian-Canadians made any survey of any Italian population in Canada to discover what proportion of Italian Canadians would take advantage of integrated heritage language programs?

Mr. De Iuliis: Without exception, all the occasions when we meet in the conferences we have--the last one was in Vancouver--everyone who is asked

whether he would like heritage languages in the schools says yes. If they had the opportunity, their children would be taking them.

Mr. Grande: I have one last question. In the last couple of weeks, Mr. De Iuliis, it seems that around here, from the Minister of Education (Mr. Conway) down, the reason we cannot have the heritage languages program during the school day in Ontario is because there are too many people from ethnic backgrounds in Ontario. Therefore, to implement it would result in logistic problems. In other words, as to when there are enough kids to form a class, the argument is: "You do not have enough kids to form a class. How can you set it up?" Then when you have too many kids to form a class, you say, "Because there are too many, we cannot set it up."

What is your reaction to that? It seems to me that message is coming across these days.

Mr. De Iuliis: I have heard this many times, of course, and it leaves me in utter consternation. I do not understand that kind of an argument. If you have lots of people wanting something, that should be cause for jubilation, not for grief. How many classes can you have in a school? What is the ordinary size of a school? What could it logically have, 300 or 350 on average? How many classes can you have that are 20 or 25 students each--eight, nine, six? Is that impossible? Would it not be wonderful if every school wanted it? Would it be logistically difficult? I do not think so.

It is what they said about French. It is what they said about public education. It is what they said about removing--there is no point in going into examples because you can go on and on, but any time a change takes place, people come up with situations that are extreme, possibly absurd. It is good that be done so you can talk about things. Obviously, you should discuss possibilities and situations, but my God, if you did that every time you wanted to do something, you would never know.

I think the situation does not make sense. "You have too few. Why, you do not have enough, so we cannot do it." I think the gentleman who came before had a very sound solution to that problem, at least for a good deal of the problem of not having enough in one particular school, but having too many does not seem to me to be a problem. It is wonderful. It is a consummation devoutly to be wished.

Mr. Callahan: Very quickly, at the present time, where children are taking their language perhaps on a Saturday or a Sunday outside of the school period, and let us put it into the projection you have where you want to put it into the school day, let us say the parents are very excited about that but the kid is not.

Mr. De Iuliis: Excited about what?

Mr. Callahan: Excited about taking that language during the school day, during the specific school day, but the parents decide they think that is a good idea for their child.

Mr. De Iuliis: In the school day.

Mr. Callahan: As opposed to the way it presently exists in some areas where it is done outside of the school day. Obviously, it is going to become a subject for which credits will be given, I would think.

Mr. De Iuliis: Yes.

Mr. Callahan: If that is the case, are you not jeopardizing that young man or young woman in terms of taking a subject his parents want him to take but he does not necessarily want to take? As it currently exists, these people go to these classes, presumably because they want to participate and because it is really extracurricular, you might call it. Do you see any problem with that?

Mr. De Iuliis: Let me see if I understand the question correctly. You are saying that people who would take the subject on Saturdays or after school are happier taking it then than in the regular school day?

Mr. Callahan: The inference might be that it is something they are doing as a matter of choice, whereas if you put it within the school day and you attach to it a curriculum, a credit, and the child is really there not because he wants to be but because his parents seem to think it is a good idea that he take it, are you not interfering with that person's overall average, number one, maybe making it a subject that will botch up his marks?

Mr. De Iuliis: Okay, I understand. There are two things to say. First of all, the child whose parent will make him take heritage languages in the regular school day will make him take it on Saturday afternoon, so the child will not like taking it during the school day or Saturday afternoon if he is being forced by his parents.

Mr. Callahan: I will accept that might be the case.

Mr. De Iuliis: I do not know if that is a valid argument, but it seems to me that in both instances that would be true.

Second, it seems to me that the child would be much more prone to study a subject that is given alongside other subjects in the regular school day with all the other children and does not feel somehow punished because he has this extra thing at the end of the day or on Saturday mornings.

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Third, if we ask the question, "Does a child want to take it?" let me tell you, I taught high school for a year, I taught math, and every day it was, "Sir, why do we have to take math?" If you ask kids, "Do you want to learn the alphabet?" they will say no. Then when they are 15, they do not know how to read and write.

I think the responsibility, at least in the elementary school, falls on the parents and on the teachers to channel the children where they ought to be going, where they feel they ought to be going. You cannot, it seems to me, educate the child by saying, "Do you want to study math in grade 3?" He will say no. Do you give him an option because he does not want to do math?

The Vice-Chairman: I guess Mr. Callahan has his answer. We cannot prolong it. We are sorry; we are over the time for the next group. I thank Mr. De Iuliis for coming and making the presentation to us this afternoon and for leaving with us a helpful brief.

We have now the Ontario Public School Trustees' Association coming before us. According to my numbers, you are three on my list. You are three here, with Mr. Parry as well. Sharon Campbell, William Phillips, Marie Pierce

and Ross Parry. Will you be presenting in the first instance, Mrs. Campbell?

Mrs. Campbell: Yes, I will.

The Vice-Chairman: Okay. Thank you very much. As always, we advise people to speak towards the mikes and stay forward so the voice does not disappear. Proceed as you wish.

ONTARIO PUBLIC SCHOOL TRUSTEES' ASSOCIATION

Mrs. Campbell: First, I would like to introduce the members of our group. Bill Phillips, on my left, is the executive director of the Ontario Public School Trustees' Association. Marie Pierce, on my right, is the director of policy and legislation. Ross Parry is the director of public affairs for the Ontario Public School Trustees' Association.

The Ontario Public School Trustees' Association represents the majority of Ontario's boards of education and public school boards of all sizes and from all regions of the province. Serving over 695,000 elementary and secondary students, the OPSTA promotes the quality of public education and represents the interests of public school trustees to the provincial Legislature, the Ministry of Education, other government ministries and the public.

With second reading of Bill 80, An Act to amend the Education Act, heritage language programs have become the focus of much concern and debate. Bill 80 proposes major changes to the existing heritage language programs without any prior consultation with school boards or any extensive examination of existing programs to see whether changes are required and, if so, in what areas.

The OPSTA recognizes that Ontario is a province rich in cultural and linguistic diversity and heritage. This multicultural reality has and will continue to be reflected in Ontario's educational system. In 1985-86, more than 90,000 students were enrolled in over 4,000 heritage language classes offered by 72 school boards throughout the province. These children were in programs provided in 58 languages.

Since the heritage languages program started in Ontario in 1977, the number of school boards offering programs has increased from 42 to 72 and the number of classes offered has more than doubled, from 1,968 to 4,364. These facts speak for themselves. In short, Ontario's school system, and most certainly OPSTA's 56 member public school boards, have demonstrated a commitment to and a responsiveness to requests for heritage language programs in this province.

Our submission will outline the current situation with regard to heritage language programs in Ontario and focus on the issues highlighted by Bill 80.

Heritage language programs are currently offered by school boards in Ontario as continuing education subjects in the primary and junior divisions and in grades 7 and 8 of the intermediate division. The current regulations were introduced in 1977. Regulation 262, subsection 9(2) permits an elementary school board to offer as part of its continuing education classes a language other than English or French to pupils enrolled in its day schools.

Under the current heritage languages program, school boards are not

required to offer heritage language programs, but parents of pupils enrolled in an elementary day school may request the school board to organize classes in a heritage language under its continuing education program. Such classes may be offered after school, on nonschool days or, where enrolment justifies, during the normal school day by extending the required five-hour instructional program.

Most school boards offer heritage language programs outside the regular school day. A board wishing to set up heritage language classes must accept full responsibility for the staff, curriculum and supervision of the classes. Classes may be held in a facility other than a school provided the instructors are hired by the board and provided the board accepts full responsibility for the classes.

The instructors hired by the board for these classes need not have an Ontario teaching certificate but should have qualifications acceptable to the board, the principals and the parents' groups. Currently, heritage language classes are taught after school or on Saturday by individuals fluent in the language and culture, not necessarily certified teachers.

Regulations also currently provide for the transitional use of languages other than English or French. Under clause 235(1)(f) of the Education Act, it is permissible for a teacher to use a language other than English or French in the instruction of pupils and in other communication with pupils in regard to discipline and the management of the school. It is intended to apply for the transitional period during which a pupil is learning the English or French language. Such instruction could be made available to pupils who enter the school system without knowledge of English or French.

Provincial grants are available for the teaching of heritage language programs. The general legislative grant regulation for 1987 provides a grant equal to \$34.50 per hour of classroom instruction where class size is 25 or greater. If the class size is less than 25, then the grant rate is reduced by a set amount per pupil under 25. The government has made a commitment of approximately \$11.5 million a year to support these programs.

There are two central issues regarding heritage language which are highlighted by Bill 80. Bill 80 proposes to amend the Education Act in two important ways. First, it would integrate heritage language into the regular school day as (a) a subject of instruction for academic credit and/or (b) a language of instruction for all subjects to be used during a transitional period. Second, it would provide for the establishment of local heritage language advisory committees.

The OPSTA cannot support Bill 80. Bill 80 recommends sweeping changes for boards of education, and yet there has been little or no consultation with the boards in regard to these changes. There has not been a major review of the programs that currently exist on whether they adequately meet local community needs.

Bill 80 would make it mandatory for school boards to integrate heritage language programs into the regular school day as a subject of academic credit and/or as a language of instruction, provided written evidence is presented to the board that a number of students resident in the board area and directly related to a heritage language community or whose mother tongue is a heritage language have elected to be taught the heritage language as a subject of

instruction or as a language of instruction for the purpose of transition to English or French (subsections 277e(2) and 277f(1)).

Should this occur, the board shall forthwith determine whether students can be assembled for this purpose in one or more classes of 20 or more, and where the board determines that such students can be assembled, it shall provide the language as a subject of instruction and/or as a language of instruction in such classes or groups.

It is not clear under Bill 80 whether the proposed classes of 20 are to include children in all age categories and abilities or whether some grouping as to age or language facility is to take place. It would be more reasonable if these classes required 20 students of a given division, at least, in order to provide an adequate educational experience; that is, 20 students in the primary, junior or senior division of an elementary school.

The OPSTA is strongly opposed to the arbitrary integration of heritage languages into the school day. Integration has both program and financial ramifications which cannot be ignored. More fundamentally, the mandatory establishment of heritage language programs in the school day undermines local school board autonomy and ability to respond to local community concerns. Without any analysis of the current situation in Ontario with regard to heritage language programs, there are the implicit assumptions that the heritage language program needs to be radically changed and/or that the vast majority of school boards are in some way denying young people the opportunity to learn and appreciate their heritage language.

Neither of these two assumptions is valid. In his statement to the Legislature, Mr. Grande stated, "While the program that was instituted in 1977 can be termed a success, we feel it needs to be improved." However, Bill 80 does not improve the heritage language program. Bill 80 changes it in fundamental ways which will be detrimental to school boards and the students they serve.

1700

The issue of integration of heritage language programs into the school day was the subject of an arbitration decision by Owen Shime, QC, between the Toronto Board of Education and the Toronto Teachers' Federation. In his decision, Shime stated that there was "nothing illegal in integrating these"--that is, the heritage language--"classes during the school day as defined by the regulations."

In arguing for the benefits of integrating programs in the school day, however, Mr. Shime rested his decision on the consultation process and stressed that the heritage language program was not imposed on all the students in the Toronto schools and that there was "ample time for discussion and local community input into the decision." "An integrated program was not unilaterally or arbitrarily foisted on the teachers of the community or the community." This is not the case with Bill 80. There has been no consultation process, no community input into decisions regarding integration.

More specifically, there are both program and cost implications of integrating heritage languages into the regular school day as a subject of instruction.

Integration would, in most cases, result in the extension of the school

day, since school boards already have problems finding the necessary time in the current school day to provide the essential core programs.

An additional hidden cost would be the cost associated with compensating teachers for a 10 per cent extension of their work day. Presumably, a board could not unilaterally extend the conditions of work without it becoming a negotiation issue for the teachers.

Timetabling will become a major concern as school boards decide what to do with those children who are not taking the heritage language programs. Alternative programs which do not include core subjects will have to be developed.

The cost of transportation would be dramatically increased. Children will have to be bused to schools that offer heritage language programs.

Integration within the school day for credit or as part of the instructional unit would reclassify heritage language programs from continuing education programs to regular day school programs. School boards would, therefore, no longer be able to hire noncertified teachers. This would more than triple the costs of providing these programs.

There would be an effect on secondary schools. Currently, provisions for heritage language programs are for elementary school students only. The legislation makes no reference to the ways in which these programs would relate to current language credit courses in secondary schools.

Mandatory integration with the school day also raises several administrative issues which Bill 80 fails to address. Specific references must be made with regard to:

The number of heritage languages a school board could reasonably be required to provide, whether schools within a given jurisdiction could pool classes so that specific languages would be offered in specified schools, instead of all schools in a given region.

Curriculum development which would ensure the maintenance of a province-wide standard in heritage language.

Increased provincial financial commitment to cover the additional transportation and teacher salary costs involved, including the cost of extending the school day and hiring additional qualified teachers to teach these programs.

Either the development of teacher training programs designed to enable individuals to specialize in heritage language teaching or a relaxing of the teaching certificate requirement for teachers of these programs.

Mandatory integration within the school day assumes that only one option is appropriate for all communities. It not only reduces local autonomy but also denies flexibility to the school board in responding to local community wishes. Current heritage language programs are offered in a variety of settings and areas: after school, on weekends and, in some areas where the community has agreed, in an extended school day. Local communities and local school boards have an important role to play, and this flexibility and autonomy must be maintained.

With regard to heritage languages as languages of instruction, as we

have already pointed out, heritage language classes as languages of instruction for transition purposes are already provided for in the Education Act.

Bill 80 would require school boards to establish an advisory committee and provide for the holding of election of committee members. The advisory committee will be responsible for developing proposals designed to "meet the cultural and educational needs of students and community members who speak or wish to study the heritage language." They would have power to make recommendations regarding the operation and management of instructional programs, the recruitment and appointment of teachers, the course of study, transportation issues, adult education programs and other matters.

Bill 80 also requires qualifying school boards to consult with the advisory committee, and boards shall not refuse their approval without giving the committee an opportunity to be heard by the board or related committees of the board. Should the board refuse recommendations of the committee, the committee may appeal to the Minister of Education, who may resolve the matter of disagreement.

The OPSTA cannot support the mandated establishment of heritage language advisory committees. There are no indications of how many advisory committees would be required. Is there to be an advisory committee for each heritage language program offered? There is the unsupported assumption in Bill 80 that the current heritage language programs offered by school boards are inadequate and do not meet the needs of the local community.

School board programs would be further fragmented and school boards would have their autonomy further reduced by Bill 80. School trustees are elected representatives of the community and, as such, are responsible to the local community, including the local ethnic communities. Bill 80 would erode local control of education. It is this autonomy that gives Ontario's school system the ability to meet the diverse needs of its students. Legislation, such as Bill 80, that demeans this great quality of our school system would be a serious mistake.

Heritage languages programs, as they are currently offered, are quite flexible in allowing the input of local ethnic communities into the kinds of programs being offered and the teachers hired for the classes. The responsibility for the programs, however, rests with the local school board. The OPSTA believes the local board should be given flexibility in the setting up of the actual mechanism involved to ensure local community input into heritage language programs.

There has been very little or no examination of existing programs to determine whether they are currently meeting community needs. Information is not available on the kinds of resource material being utilized or the curricula being followed. Who decides on the curriculum to be followed? Where do teachers go to find textbooks? Detailed data are not available on the kinds of instructors teaching these programs.

With regard to the question of who is to control and run heritage language programs, there have been some allegations that school boards have not been responsible or sensitive to local community needs for heritage language classes and thus the suggestion that only specific groups organized in heritage language advisory committees can make these decisions. There has, however, been no examination of the ways in which heritage language programs

are currently being organized and provided for by school boards to determine if there are indeed problems.

What sort of administrative arrangements are being made across the province? Do school boards provide the heritage language programs, or do they contract out the programs to various community groups? What mechanisms exist for input by various community and parent groups into the nature of the programs or the teachers chosen to teach them?

Instead of a detailed analysis of these and many other questions, the assumption has been made that the current programs are inadequate. This assumption is unfounded. School boards across the province are offering heritage language programs under various conditions and in many languages. It is strongly suggested that before any major changes are proposed to the existing program, there must be a detailed analysis of the current situation. Bill 80 is not the solution to any of the real or perceived problems with the heritage language program.

The OPSTA has since December 1986 undertaken an extensive analysis of the issues surrounding heritage language programs in Ontario, including the release in March of a discussion paper. Our comments today are based on the responses to this paper. In summary, the OPSTA would like to stress that:

1. We cannot support a bill which takes away local autonomy and flexibility in the provision of heritage language programs and assumes that only one option is appropriate for all communities regardless of the local circumstances.

2. Mandated heritage language advisory committees, based on the unsupported assumption that the current heritage language programs offered by schools boards are inadequate, do not meet local community needs and do not allow local ethnic community input, are unacceptable.

The OPSTA is anxious to examine the minister's proposals, released on June 8, which provide for flexibility, recognize that local communities and local boards have an important role to play in the nature of the heritage language programs being offered and recommend important initiatives for curriculum enrichment and staff development.

We would be pleased to answer questions.

1710

Mr. Chairman: Thank you. The problem is that I was not able to be here. I was down requesting funds from the board, as always.

Interjection: Did you get them?

Mr. Chairman: Not yet, as always.

Mr. Grande: I would like to ask several questions, but probably we will not have the time to ask all the questions that you raise here. The general kind of feeling I get is that it seems to me you are asking a lot of questions as opposed to providing us answers to the questions the bill asks. In other words, we look to you as trustees in the field and the teaching profession for the answers to these questions, but unfortunately you limit yourselves to the questions.

In terms of the educational research done with regard to bilingual and trilingual programs, French-immersion programs, the bilingual programs in the western provinces--Alberta, Manitoba, Saskatchewan--the integration of heritage languages during the school day in these provinces as a subject of instruction and as a language of instruction and in Quebec as a subject of instruction, all these questions obviously were asked in those provinces as well. But the solutions were found. Do you believe the research is there for us to be saying, "Let us put aside some of these questions you are asking here"? It is good for kids to have bilingual programs. It is good for kids to have French-immersion programs. It is good for the child's educational development and for the development of his abilities, his brain power. What do you say to that?

Mrs. Campbell: There are two issues you have raised, Mr. Grande. One is the mandatory nature of the program. The OPSTA has not said it opposes the programs being mandatory. What we have said we oppose is the program being mandatory within the school day. We feel that currently in the school boards where heritage language programs are being offered--and that is the majority of school boards that are members of our association--we have the option of providing that program within the school day or at a time agreeable to that particular ethnic community, which may, in fact, be outside of our regular school day. So I think there are two quite distinct issues you have raised.

Mr. Grande: Actually, I was not going to get into that, but okay, let us get into it. In terms of the autonomy of the boards, as we know it, you make sense. I understand. I have been fighting for autonomy for the boards for the past 12 years in this Legislature. But let me ask a very direct question in terms of boards' autonomy. If I were to say to you that Bill 80 could be amended so it would be up to school boards to make the decision as to whether they want the heritage languages during the school day and as a language of instruction, how many boards in the province of Ontario would pick up these kinds of programs?

Mrs. Campbell: First, we do not have any indication there are large numbers of ethnic groups requesting heritage languages programs and who are being denied those programs within their local school boards. In fact, our indication is quite the opposite.

The figures on page 1 show that over the past few years school boards have been responding when ethnic communities have expressed an interest and a need to have such programs offered to their students. The figures are in the third paragraph on page 1.

To be honest, we do not anticipate, in any form of heritage languages programs being mandated to school boards in the province, a vast increase in the number of classes over what is presently being presented to groups.

Mr. Grande: I am sorry. I want to make it clear. I am not talking about mandating these programs. Bill 80 talks about mandating programs of heritage languages as subjects of instruction.

Let us change Bill 80; let us say an amendment could be made to Bill 80 so that, just as in the western provinces, it is not mandated. Out west, the boards have done it; the boards have decided to do it. As a matter of fact, out west the Minister of Education requires that a board make the decision to have heritage languages during the school day or bilingual education programs. Then the board has to provide a plan to the Minister of Education. The plan goes to the Minister of Education who approves the plan of the board. In other

words, the initiative comes from the school board to do these programs out west.

The question to you is, if it were to be like the western provinces, where the initiative would come from the boards of education, how many boards of education in Ontario would you foresee right now that would say to the Minister of Education, "We want to establish these programs during the school day"?

Mrs. Campbell: First, I am not sure I understand your question yet, but let me say that it would not seem the right route to go for a school board to initiate the program. It would seem to me that the source of the program would be an expression from a particular ethnic community to the school board that it wanted such a program. It would not make sense to me to have a school board say, "We are going to provide instruction in the Polish language. Is there anybody out there who wants it?" That seems a backwards way to approach it. So I think the initiative would come from a group within a community to the school board. I guess it is our stance that once that group makes its needs and wishes known, right now the school boards of Ontario are responding to that need.

I would like to point out that I come from a very small board, the smallest board in the southern part of the province, Prince Edward county, and we do not have a single heritage language program. That is not to say we are not responding to an expressed need; we have never had anybody ask us for instruction in any language other than English or French. To anticipate a large number of boards providing programs where they are not now--that is not something I think would happen.

Is that an answer to your question?

Mr. Grande: I think you have answered. You have answered that, more than likely, no board in Ontario is going to opt for the kinds of programs the boards have instituted out west.

Mrs. Campbell: No, I do not think that is true. I am sorry. I am not doing well. That is not what I answered at all. I would like to go to someone else. I am not getting through here.

Mr. Grande: Okay.

Mrs. Campbell: Mr. Phillips.

Mr. Phillips: A couple of school boards are already offering heritage languages programs within the school day and it is possible under the legislation currently in effect. They do not offer it in many schools, even though the boards believe there should be heritage languages integrated into the school day where it is appropriate to do so. The reason few schools have taken heritage languages into the school day, even in those boards that want to--for instance, I believe that in the city of Toronto, out of more than 100 elementary schools there are only a handful, about a dozen or so, where it is possible to offer heritage languages during the school day--is that in order to offer heritage languages during the school day without too much dislocation of the program for the rest of the students, you have to have a large concentration of people within the ethnic communities who want those programs. And it is very rare in this province to have those large concentrations, because heritage languages programs are different from regular programs in the school day.

The instructional program in the school day is a program taken by all students. Heritage languages programs, by their nature, are programs that are totally optional on the part of the students. Students can attend or not attend depending on whether their parents want them to attend. Heritage languages are not mandated on parents or their youngsters. They are not forced to take heritage languages program, while they are forced to take math and reading, etc. That is the difference; that is the distinct difference.

Mr. Grande: That is the problem. Bill 80 tries to address that.

1720

Mr. Phillips: Once you have mandated programs which every child in the elementary school takes, you do not have a problem timetabling the school, because the general pattern in the school system is that the whole class takes the program.

Once you break away from that pattern, you are into great difficulties in organizing your school. You are into lengthening the school day; you are into what you do with the pupils who are not going to take the program; and it is very difficult. In the city of Toronto, for instance, where they have opted to have school programs integrated, very few schools are available where this is functionally practical. Frankly, that is the reality of the situation.

I think to say that large numbers of school boards and large numbers of schools will opt for heritage language programs integrated in the school day is being unrealistic. I do not think it will happen. I think there would be too much resistance to it within the local school communities because of the disruption of the program to other students, because it is not a mandatory program that everybody takes. Therefore, since it is not, it is like other programs that some people can opt into and some people cannot that are offered outside the regular school hours.

I think Mr. Parry has an additional comment on that one, because it is a critical issue.

Mr. Parry: Just one, Mr. Grande, on perhaps a more basic observation, and that is that with Bill 80 or the minister's proposals, the one similarity being that they both would require the program should 20 or 25--depending upon which figure you wish to abide by--students or parents wish it, it is our expectation, based upon the consultation we have had with our boards emanating from our discussion paper, that there will not even be a massive increase in heritage language programs should any one of those requirements pass. It is not our indication that in most communities in the province, parents or students are clamouring at school boards to offer heritage language programs in the first instance, never mind whether it be in the school day or not.

It is no secret that in Ontario there are a couple of school jurisdictions in which there is some tension between the board and its community, but is that the majority in the rest of the province? Clearly it is not.

Whether it possible to pass legislation--I do not know whether you are offering a window, by the way, in indicating Bill 80 could be amended to provide for that flexibility. If you are, it is the first I have heard of it or our association has heard of it, but we will take it under advisement. That may be a window you are suggesting. We had thought it was pretty much a matter

that could not be capped off, but in any case, our expectation is that should the minister's or Bill 80 or some form of legislation be passed that would require the operating of the programs in the first instance, we do not expect there to be a massive increase in those programs.

In fact, by and large, as our brief indicates, the record speaks for itself. When you compare it to other provinces, by the way, they are fairly impressive numbers we are talking about, perhaps not in the manner you have envisioned, but in terms of young people experiencing these programs, not only the language but also the culture, it is fairly impressive.

Mr. Grande: I think it is important--

Mr. Chairman: Mr. Grande, I bring to your attention that I have two other questioners after you and we are going to run a bit short, especially if we have any votes upstairs.

Mr. Grande: Let me just ask one more question, I guess, and that is in terms of the certification of teachers. The point the brief makes is the teachers are not required to be certified right now to teach the heritage languages, because the heritage language is taught after school and therefore it is not part of the regular curriculum of the school. Should the heritage language become part of the regular curriculum of the school, then we need certified teachers, because I do not think anyone would suggest that a noncertified teacher should be teaching math, should be teaching English or should be teaching other subjects.

Mr. Jackson: Shop--

Mr. Grande: Well, all right. In other words, one follows the other. If we delete--and by the way, there are 38 community organizations, meaning congresses of German, Italian, Portuguese, Spanish, you name it in terms of ethnic communities that have said they want this during the school day, 38 in Ontario, which implies a lot of people across this province. While they are not saying, as the previous speaker from the Italian congress said: "It is not that we were not happy with the heritage language program in 1977 being maybe after school, but let us remember this is 1987. This is a decade after that, so we should be moving from that point. You cannot have it after school all the time and think all is rosy and well with the world."

Anyway, I wish we had a lot more time because these are the kinds of questions--perhaps we should start from the same information base, and I do not think we are starting from the same information base.

Mr. Chairman: There is always a deficit there. I am never sure which side it is on. However, this is only the beginning of a discussion, as I have said to other groups before us. We still have to order our business for the fall and other options in terms of calling people back and listing specific responses to you from potential changes is there before the committee. Mr. Jackson had some questions.

Mr. Jackson: Briefly, I had a question with respect to the point you raised on page 6, which Mr. Grande just referred to as well, the issue of certification.

Mr. Phillips, you had indicated that there are some programs available now. Do they resolve the certification matter? Has that been grieved? Or is that clear? Are there guidelines that are day programs, or are they considered

optional continuing education, but offered during the day? I just need that clarified in my own mind.

Mr. Phillips: The question of the arbitration was with respect to whether or not it was a breach of the contract for the Toronto Board of Education to enter those programs into the school day and thus lengthen the time of the school day and keep teachers at school longer. Shime said it was all right because there had been extensive community involvement in the decision-making process.

The question of certification is that, if you have a credit program, a mandatory program that is within the instructional program of the school day, that five hours of instructional time that exists, then you must have certified teachers teaching that program, otherwise it is not a credit program. That is the way the province has existed for a long period of time, where you have certified teachers teaching programs.

In continuing education courses where the programs are more interest oriented, there is not a need to have a certified teacher teaching the program. Therefore, you do not have to hire somebody who has had all the years of university; you can actually pick somebody from the ethnic community who is a native-language speaker, fluent in it, in touch with the community, in touch with the culture of the community and, frankly, I think much better equipped to interact with the children of that cultural group and ethnic group, language group, than would be a professional educator who has gone through and comes in from outside the community to be the instructor.

Mr. Jackson: Following on that line if I can, briefly, you are aware of the government's response to Bill 80. I do not recall examining that document's references to the issue of certification. Is that a matter of concern to you or what were the elements of certification that were in that report?

Mr. Phillips: The options within the report did not include offering--and I believe you are talking about the document that was just released by the Minister of Education.

Mr. Jackson: Yes.

Mr. Phillips: In that document, as I read it, there as no intent to make heritage language programs credit programs within the regular school day. They would continue to be continuing education programs, and thus the certification of teachers question would not arise, because you do not have to have certified teachers to teach those types of programs. That is one of the basic values of the current heritage language program, that you do not have to get it tied up in all this teacher contract, certified teacher, professional teacher, and you can actually use the people in the community to teach the program with the richness of the cultural heritage

Mr. Jackson: No. We have been through that. My first question was for those programs that are currently in operation, do they use certified teachers?

Mr. Phillips: No.

Mr. Jackson: I got a sense of that, but it is a clear no?

Mr. Phillips: No.

Mr. Jackson: And there was an actual arbitration? It was grieved? I mean, I was guessing. I was not sure if there was a grievance on that.

Mr. Phillips: The grievance was not about whether or not they had to use certified teachers. The grievance was whether they could keep regular teachers for the extra half hour by which they had to lengthen the school day, in order to accommodate the integration of the heritage language program within the school day.

Mr. Jackson: Have we, prior to this, circularized a copy of that arbitration finding?

Mr. Chairman: We referred to it a lot, but I am not sure that it actually was circularized.

Mr. Jackson: Would it be possible to get a copy of that?

Mr. Grande: I have a copy here. I will make copies.

Mr. Chairman: The clerk will be glad to help you out.

1730

Mr. Jackson: I would certainly be glad to have that. That is great. I would appreciate that. Mr. Parry, do you want to say something?

Mr. Parry: Just briefly, of course that does not exclude the option of putting it in the school day, in which case a certified teacher would have to be used, the distinction being that is one of the options. If it were used, and in some cases it is, a certified teacher would be required for that.

Mr. Phillips: Currently, no heritage language program is part of the regular school program by the law of this province. They are all continuing education programs. You may have a certified teacher teach a continuing education program, of course--

Mr. Jackson: If you can afford it.

Mr. Phillips: --but you do not have to do so. You may pay a continuing education teacher anything you want to pay him, whether he is certified or not, but it is up to the board to determine what is an appropriate salary.

Mrs. Campbell: Further to that, the question of certification, in our view, appears to eliminate the very people who would be best teaching a program to the students, because presently there is a shortage of language teachers at the secondary level where such certification would be required. We could see a real problem in having enough people whose culture is that language and who also have certification.

Mr. Allen: It is a pleasure to have some more dialogue with familiar people. I hear a number of messages in the brief. I hear a message about consultation, which I think is entirely appropriate. I certainly gather that the language that expresses concern about mandatory programs arises out of some history of mandated programs in Ontario in recent years that has provided a little bit of discomfort for boards, for better or for worse.

I do get the message about consultation. I think part of the purpose of

a private member's bill and a private member trying to get it before a committee is also to pursue the question of consultation via the committee route, to see where interested parties sit with respect to a bill and to try to move on from there to further consultation around points of difference and, finally, to amendments and to get that whole process under way. If there is value in the bill, then at the end of the day, however long the process, something useful can come out of it. The message is certainly in your brief, and I think it is fair to say that it is heard.

I guess the question I asked myself after your brief is whether, from your perspective, there are any significant or substantial problems in the way in which heritage languages are currently delivered by your boards.

Mrs. Campbell: I cannot say we have been made aware of any specific problems. We do have a sense that if there is a need expressed by our community, there is a process that each board sets up for itself to meet with the community to discuss what it feels it requires and then to try to put that into practice, but I think, as an association, we have no sense of major problems presently.

Mr. Phillips: I second that. Our boards are now able to respond to community desires in terms of heritage language programs. If it is appropriate to have them after school or on weekends, they can be held then. If it is appropriate to have them during the school day, they can be held then. If it is appropriate to have them in school facilities, they can be held in school facilities now. If it is appropriate to hold them in community halls of the various ethnic groups within the cultural setting, it is possible to have it now.

It is now possible to involve the communities in the decision-making process very flexibly, and even involve in certain language groups more than one community, sometimes separately, because there is flexibility there. It seems that boards have been able to respond. You and I both know that there are various voices that come to school boards, and different groups want different things. The school board's job is to reconcile, because you cannot do everything for everybody all the time. Quite often, when you do one thing, it comes in and makes some difficulties in terms of something else. So you have to balance that.

I think the elected members of school boards are the best people to determine that locally. I think that is what the heritage language program currently allows. From the point of view of our school boards, in almost all cases--nothing is ever perfect, of course--it seems to be fitting the need very well.

Mrs. Pierce: That is what I said also, that when we released our discussion paper in February or March to all our school boards, we did not get any indication and feedback from our boards that they were having problems with the way they currently organize the heritage language programs.

Mr. Allen: Do your boards include all the larger boards?

Mrs. Pierce: We have 56 member boards across the province, with small, large and northern boards.

Mr. Phillips: Not all the larger boards.

Mr. Allen: Where are your large boards centred, if I might ask?

Mrs. Campbell: All of our member boards are listed on the front of the brief; they are mainly in southern Ontario.

Mr. Allen: What you are telling me, then, is that none of the associations Mr. Grande referred to has ever made representation to any of your boards for some significant augmentation or change in the heritage language program they offer, so it would become an integrated program in the school day, as a regular option, on some basis, in some classrooms?

Mrs. Campbell: There has not been any indication to us that that has been the case, that a local board has experienced that kind of presentation and has not responded to it.

Mr. Allen: My next question, if the chairman will still tolerate my asking one--

Mr. Chairman: I will allow you one short one.

Mr. Allen: It gets to the nub of the question. Presently, as the Ontario heritage language program is structured, its purpose essentially, as I read it, is a kind of cultural maintenance, a degree of language maintenance, an enrichment, but it does not aim at maturing language fluency for the children in question so that it can become a working language for those children.

The programs in western Canada, that have grown out of the legal option of teaching as an instructional language in the school system, while they are not huge, have none the less produced schools of a bilingual or trilingual nature that make that possible. Are you saying you do not see any need for that in terms of the educational growth of at least significant numbers of young people in Ontario, given the kind of language and cultural resources we do have and that we could build on in that way?

Mrs. Campbell: I would like to begin that answer by saying that with the present flexibility of providing whatever kind of program in whatever manner the community and school board think is appropriate, the language of instruction can now be continued from the point when the child enters school, which can be as young as three years if the child is in a junior kindergarten program, right through to the end of the elementary program, which would make a child 12 or 13 years old. There is certainly a continuation of the program that is allowable now under the arrangements that school boards have with communities.

Mr. Allen: You are saying your boards would interpret the transitional language option as something that could persist right through the entire elementary years?

Mrs. Campbell: No, I am saying as it presently exists as a continuing education course.

Mr. Allen: As a continuing education course?

Mrs. Campbell: Yes.

Mr. Allen: I trying to press you beyond that. That option does not really make it possible to maintain and develop mature language fluency without additional reinforcement.

1740

Mr. Parry: I do not know whether it is advisable to have a question answer a question, but I suppose it would depend upon your determination upon it. Were you quoting, for example, from the regulations on heritage language programs in saying that it did not achieve this goal, or were you making an observation that in other provinces it did achieve that goal?

Mr. Allen: What I am saying is that what you accomplish that way is by no means comparable to what you accomplish by having languages used as a language of instruction in other areas than simply teaching the language as a subject and then hoping that somehow or other a little bit of that is going to produce fluency and the capacity to use that language on a daily basis.

Mr. Chairman: Make this a short answer, because we are getting much into the other group's time, but this is one of the nubs of the question, surely.

Mr. Phillips: It is going to depend on what Ontario sets as the goals for its educational system, because the school system cannot do everything for everybody that everybody wants. Currently, in the language area, we are working on the assumption that we provide English-language instruction or French-language instruction as a first language for those two language groups and our responsibility is to make certain the person is able to operate extremely well in the first-language group, either English or French.

Also, we are attempting, as government policy establishes, to develop some fluency in French as a second language or English as a second language for those youngsters who are being educated in the primary language, because those are the two official languages of the country. For the second language, the second official language, the goal of the province is not to get everybody fluent in the second language, although it allows for that option in the immersion French program.

The question the province has to ask is: Instead of the two official languages and the type of emphasis on them, does it wish to go into a third or dozens of third languages, to provide that and put that on the school system as a requirement? Currently it has not, and the advisability, I think, is one the government would have to look very carefully at.

Mr. Chairman: It does strike me, though, that is the nub of the argument around Bill 80.

Mr. Allen: That is the nub of the issue.

Mr. Chairman: As Dr. Allen says, it is nice to see you all here again, and on Thursday, who knows? When the results of the Supreme Court are out, we may be back for another whole set of hearings on other matters. It will always be good to see you when you do come. Thank you very much.

Mrs. Campbell: Thank you for allowing us the time. We look forward to seeing you any time.

Mr. Chairman: Our final deputant is from the Chinese Lingual-Cultural Centre of Canada and the Chinese community, Muriel Fung, to whom I apologize. Please take a seat in front of me. We are running a little bit late, but as you know, when we get into this kind of discussion, it is

hard to cut it off, as members are being stirred to ask questions and respondents want to take advantage of the opportunity. We have just circulated your presentation to the members.

CHINESE LINGUAL-CULTURAL CENTRE OF CANADA

Ms. Fung: Thank you. I am very pleased to come before you and share with you the position of the Chinese community regarding the heritage language program. Before I read my paper, I would like to say a few words about myself and the organizations I represent.

I am a statistical consultant at the Ontario Institute for Studies in Education. My connection with heritage language teaching dates back to the early 1970s, when a group of educators, teachers and parents introduced the bilingual-bicultural Chinese program to Orde and Ogden public schools. I was one of the advocates for this program. Throughout the past 15 years, I have spent many hours voluntarily to promote the heritage language program.

I am the president of the Chinese Lingual-Cultural Centre of Canada. Two of the major objectives of this centre are: first, to promote, encourage and develop interest in the study of Chinese culture and language; and second, to organize and administer courses in the Chinese language and culture at the elementary level.

I am also the representative of the Coalition of Chinese Community Organizations, about eight of them. The eight organizations are the Association of Chinese Community Services; Chinese Canadian National Council; Chinese Canadian National Council, Toronto chapter; Chinese Lingual-Cultural Centre of Canada; Council of Chinese Canadians in Ontario; Federation of Chinese Canadians in Scarborough; Federation of Chinese Canadian Professionals (Ontario); and the Toronto Chinese Parents Association.

Chinese Canadians in Ontario have always been supportive of teaching heritage languages in the schools. In the early 1970s, a group of dedicated parents, teachers and educators in Toronto organized the bilingual-bicultural program in Orde Street Junior School and Ogden Junior School, which have become the pioneer public schools in heritage language teaching and are well known for their successful integrated Chinese programs. It was this group, with the combined efforts of some other cultural groups, which urged the Ontario government to adopt the heritage languages policy in 1977.

Our schools have the mandate to maximize the personal potential of each child according to his or her needs, cognitively, affectively and physically. We entrust the school system with providing programs which will help develop skills, knowledge, attitudes and emotions in the child so that he or she will acquire a sense of confidence in himself or herself.

Although the cognitive aspect of education is adequately instigated, the psychological wellbeing of the total child is often ignored. Heritage language education not only provides the child with necessary cognitive and affective bases for developing positive self-concepts but also fosters a real feeling for multiculturalism. The child will learn to respect alternative lifestyles within different cultures and, in so doing, develop sound concepts of human and civil rights, appreciating the cultural diversity of Canada and giving a greater meaning to the notion of Canadian citizenship.

Heritage language is the essence of culture. We encourage our children to strive to maintain our linguistic and cultural heritage. We remind them of

our ancestral roots. We help them to preserve our traditions and culturally precious differences. We also constantly urge them to reach out to other cultures with mutual understanding and respect. This is the true meaning of multiculturalism. Canada is a unique country, rich in multifaceted cultural heritage.

Pedagogically, bilingual programs in Canada have been evaluated positively. Empirical research repeatedly shows that a child's linguistic ability in the official language increases when he or she begins to learn other languages. Educators maintain that the study of two or more languages is beneficial not only to the overall education of our children; the entire society would benefit by having a significant segment of its population fluent in more than one language.

When the legislation of heritage language was passed in 1977, we thought the government of Ontario was sensitive to the needs of many communities and was committed to transmit and retain the rich multicultural heritage of our province. But instead of creating a more meaningful and more equitable program for our children, we saw one with limited scope which failed to optimize the benefits of heritage language teaching.

Indeed, for the past decade heritage language instruction has been offered through after-school, nonschool day or extended school day classes. However, allowing heritage language to be taught in the school system but not within the regular school day has caused a great deal of dissatisfaction. Heritage language programs taught after regular school hours serve to segregate elementary school children. It inhibits opportunities for after-school play and association through which children develop socializing skills. Very often, community centres offer sport or cultural programs during the same period of the day. Children of the heritage language program were then deprived of the chance of taking part. Because of this dilemma, many parents reluctantly allow their children to opt out of the program in order to participate in other activities with their peers.

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Again, both the teachers and the students feel that having the program after school hours seemed an extra burden tacked on to the end of the day. It makes teaching and learning of a heritage language look more like a punishment than a desire or beneficial goal to pursue. Further, most after-school programs are considered as extracurricular activities and, therefore, have diminished significance. We have to integrate heritage programs within the context of the regular school day in order to respect multilingual education.

Integration of a program in the schools implies interdisciplinary immersion. Integration takes into account the entire content and orientation of a school program, rather than being an aggregate of discrete subjects. Heritage language teaching should therefore be introduced as an integral part of the educational system; that is, as a core subject of the regular school curriculum and not an appendage to the curriculum.

No one would dispute the benefit of multilingual education. In our multicultural society, what is more suitable than to foster a positive interpersonal relationship in our diverse community? We establish rapport and communication between the ethnocultural families and the school and thus create a more harmonious society. Most of our children entered school with fluency in their mother tongue, but this communication skill they had with their parents or grandparents is lost by the time they enter high school if

heritage language is not maintained. It is indeed irresponsible to allow a child who has knowledge of a third language to deteriorate as he or she proceeds through elementary school.

Our high schools provide accredited language programs. It is ironic that a student, on entering high school, is offered the opportunity to learn his first language. By that time, during the intervening years, immeasurable damage has been done to his or her self-esteem and to the communication between his or her parents, grandparents and himself or herself.

What our community wants is a high-quality heritage language program. It means a program that is administered and taught by qualified personnel. In Ontario, there is a wide range of expertise among those involved in heritage language classes. Some instructors are qualified teachers, while others have limited instructional skills specific to this program. A few school boards provide in-service training. However, this kind of training is of limited scope. It does not entail sufficient time to familiarize the instructors with such important topics as appropriate teaching-learning strategies, creation of good learning environment, nor the psychology in multilingualism. In short, it is inadequate to ensure that all instructors are well-qualified to teach the program effectively.

We want qualified instructors. In order to have some degree of consistency in the preparation of heritage language teachers, we urge the government of Ontario to initiate a teacher-training program at the post-secondary level. Such a program would no doubt be able to improve the quality of teaching in the classrooms. Certification implies recognized qualification. It helps to raise the status of heritage language teaching. By so doing, we would be able to attract more qualified teachers into the field of heritage language teaching.

The importance of heritage language programs has been well documented. Enough has been discussed on the advantages of a heritage language program and the disadvantages of not recognizing it as a regular part of the curriculum. The benefits of such a program are undebatable. It is the responsibility of the Ontario government to adopt an educational policy to make this ideal a reality. The document, Proposal for Action: Ontario's Heritage Languages Program, issued June 8, 1987, by the Ministry of Education failed to address these issues. We are disturbed by the government's insensitivity to the needs of the people.

We urge the government to adopt an educational policy that would allow the teaching of heritage languages during the regular school day in those schools where numbers and the desire on the part of the students warrant it. The teaching of heritage languages must be allowed during the regular school day in order that the maximum benefit can be derived from the program. We trust this government would pay attention to an issue that is so close to the hearts of so many people in the province.

In summary, we urge the Ministry of Education to offer heritage languages like any other subject within the regular curriculum. We believe that a strong province such as Ontario should not fall behind the four provinces, Alberta, Saskatchewan, Manitoba and Quebec, that have in place effective multilingual educational programs.

After consulting with the Chinese community and organizations, we recommend the following to the government of Ontario:

1. To recognize heritage languages within the regular school curriculum.
2. To provide accredited teacher training programs in post-secondary institutions for heritage languages teachers.
3. To provide heritage languages as a program/course in a particular school when written evidence is presented to the school board that a number of approximately 20 students enrolled in the school have elected to participate in that language program.
4. Any student who may or may not be a member of a particular language community may enrol in the heritage language program.
5. The Ministry of Education should develop approved instructional and resource materials in all languages that are opted for in recommendation 4.
6. The Ministry of Education should initiate establishment of a heritage languages advisory committee to help boards of education better meet the educational and cultural needs of the communities.
7. The Ministry of Education should assume the role of developing curriculum guidelines for training heritage languages teachers at the post-secondary level.
8. The study of curriculum needs and the development of curriculum guidelines should be undertaken by the ministry in consultation with educators and board advisory committees involved in the program.
9. The term "heritage languages" should be changed to "modern languages" to ensure continuity of the program from kindergarten through grade 13.

Mr. Chairman: Thank you, Ms. Fung. May I ask one question? You indicated you represent eight different groups and then you said--

Ms. Fung: Organizations.

Mr. Chairman: Then at the end you indicated that these recommendations are in consultation with the Chinese community and organizations. Can you tell us a little about the consultation?

Ms. Fung: About a month ago we called a meeting of those organizations and representatives, parents and interested people, and they came. From that, we had a list of many items. Those nine are the ones that met the needs of the majority. That is why I used those.

Mr. Allen: Thank you very much, Ms. Fung. I appreciate the careful argument in the brief. I certainly agree with your observation that it is rather irresponsible, where the child already has full knowledge of the language, to allow it to deteriorate and virtually disappear over intervening years, then scramble back late in high school to somehow recoup the situation. That seems to be a little odd. I have also been more and more struck, as we have been going through this discussion, to wonder whether "heritage languages" is the right terminology; it has a sort of museum quality to it. Our intent might be better expressed by, as you put it, using the term "modern languages."

I think what would interest myself and many of the committee members would be a description by you of the way in which the program functions at

either Orde or Ogden public schools. We had reference to those schools in the course of other documents.

Ms. Fung: Right.

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Mr. Allen: I know that there is a fairly ambitious program in operation. Perhaps you could tell us how you have managed to organize the heritage language program on an integrated basis within the school day at those schools?

Ms. Fung: I suppose I would like to tell you a little about the history of the bilingual and bicultural program of which I talk in my paper. When it first started, a group of us really took money from our pockets to Xerox materials and things like that. It was about four years, 1977, before we had staff. My experience with this was that at first, of course, some of the teachers and also parents had doubts about the use of it, but eventually it gradually showed that the children, regardless of their origin, really enjoy it.

I have a few of the students here--they are gone. They enjoy the program at Orde and Ogden schools. They have an integrated program, integration meaning that if the students opted not to take a program, they have enrichment programs during that time. There is a total of two and a half hours during the week, half an hour each day.

Mr. Allen: How many languages are taught at the school?

Ms. Fung: In Ogden, there is one.

Mr. Allen: Just the one.

Ms. Fung: In Orde, there is also French immersion.

Mr. Allen: I see. Those two schools are essentially the most important schools for Chinese heritage language teaching in Toronto?

Ms. Fung: Historically, yes, because it is really very strong. People from other provinces, Chinese language teachers, often come to this part of the country to observe it. The parents like it, the teachers like it and it is working well, so I want more.

Mr. Allen: How many children are in each of those schools?

Ms. Fung: Let me see. I do not know whether I have it here. Orde Street is 316, and of these 200 are Chinese. In Ogden, there are 284 and 119 are Chinese.

Mr. Allen: In both of those schools, there is a very large Chinese student population.

Ms. Fung: Yes.

Mr. Allen: I gather that there is a fairly heavy participation of non-Chinese students in the classes.

Ms. Fung: Right.

Mr. Allen: How is that worked out from the point of view of the Chinese students trying to maintain their language and then develop it further through the classes? Has that been a problem?

Ms. Fung: I do not think so. Maybe we can still improve it and make it higher quality. On the other hand, what is happening now I think is adequate at this level. That is why we put some emphasis on learning materials and also operating with teachers.

Mr. Andrewes: Just briefly, Ms. Fung, you refer on page 2 to the fact that heritage language teaching becomes more like punishment rather than the pursuit of some beneficial goal. I would not disagree with you, but why is that? You have a number of other things that are taught and participated in outside of the school classroom time: sports, music, cultural activities and so on?

Ms. Fung: Right.

Mr. Andrewes: They are not looked upon as being punishment. Why is the learning of a heritage language?

Ms. Fung: I suppose when you go home and you go to your parents, your parents would ask you, "How much have you learned today, what Chinese characters?" and whether you have dictation or recitation tomorrow. It is the same with piano. If you ask your children to practise every day, it becomes a punishment rather than enjoyment. It is more or less the same.

Mr. Andrewes: Throughout your presentation, although I think a number of the points you made are in fact a part of Bill 80, you have not commented on Bill 80 itself.

Ms. Fung: We are in support of Bill 80.

Mr. Andrewes: Thank you.

Mr. Chairman: I gather, Mr. Andrewes, you did not go through what I went through with my piano lessons versus baseball. It was a terrible choice to have to make.

Interjection.

Mr. Chairman: My math teacher was always pretty disappointed in me no matter what level I was at; that is true.

Ms. Fung: If you use it and if you practise piano during the school hours, I do not think it is a punishment.

Mr. Chairman: True. Are there any further questions? Thank you very much for attending and I am sorry we kept you a little late. We will adjourn until tomorrow.

The committee adjourned at 6:06 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

EDUCATION AMENDMENT ACT

TUESDAY, JUNE 23, 1987

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cordiano, J. (Downsview L)

Davis, W. C. (Scarborough Centre PC)

Grande, T. (Oakwood NDP)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Bernier, L. (Kenora PC) for Mr. Jackson

McGuigan, J. F. (Kent-Elgin L) for Ms. Hart

Miller, G. I. (Haldimand-Norfolk L) for Mr. Cordiano

Clerk: Carrozza, F.

Witnesses:

From the Igbo Heritage Language Program and Umunna Cultural Organization
(Toronto):

Ogbue, M. U., President

De l'Association canadienne-française de l'Ontario:

Plouffe, S., président général

From the Ontario Teachers' Federation:

McAndless, D., President

Foisy-Moon, C., Executive Assistant

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, June 23, 1987

The committee met at 4:06 p.m. in room 151.

EDUCATION AMENDMENT ACT
(continued)

Consideration of Bill 80, An Act to amend the Education Act.

Mr. Chairman: I call the committee to order. This is the standing committee on social development. We are dealing with Bill 80, an Act to amend the Education Act, a private member's bill on heritage language education introduced by Tony Grande, the member for Oakwood. We are in the last day of public hearings. We have four presentations rolled into two today and we may have some time at the end of the hearings actually to decide upon our course of events for the fall. If we do not have time, then we will reconvene on Thursday to do so.

Our first presentations are from Mr. Ogbue and Serge Plouffe. I am going to divide the time period in half. If you would like, I will give you approximately 15 minutes each to make your presentations. We will start with Dr. Ogbue. Welcome. You have been here before, so you have seen how we operate. You basically make your presentation in any way you would like to get your point across. I will open up for some questions following that, and then I will bring up Mr. Plouffe.

IGBO HERITAGE LANGUAGE PROGRAM

Mr. Ogbue: Thank you, Mr. Chairman, members of the committee and members of the Council of Ontario Communities.

Before I go on, I would like to go on record to state that our presentation today is not in any way intended to diminish or downplay current government efforts on heritage language education. This presentation is being done on behalf of the Igbo heritage language program and the Umunna Cultural Organization. I have come before you today to outline the position of the Igbo heritage language program and the Umunna Cultural Organization regarding Bill 80. I do so with great humility and pleasure.

Before I go on, I would like to say a few words about the Igbo heritage language program and the Umunna Cultural Organization. The Igbo heritage language program is sponsored by the Umunna Cultural Organization and offered under the auspices of the continuing education division, Metropolitan Toronto Separate School Board. The program provides two and a half hours of Igbo language and culture courses every Saturday in North York. There were 64 pupils who attended the classes during the 1986-87 school year. Approximately another 350 pupils in Metro Toronto would be in the program if it were offered during the regular school day.

Umunna, or "children of one family" in Igbo, is a registered nonprofit cultural organization with the following key objects: to articulate Igbo language and culture as a means of promoting cultural harmony and understanding between Canadians of Igbo heritage and other Canadians; to

operate an Igbo heritage language program for all interested Canadian children; to support the efforts of all Canadians of Igbo heritage to become full members and participants of Canadian society; and to make Canadians aware of the positive contribution of Afro-Canadians to Canadian society.

Umunna, pupils of the Igbo heritage language school and their parents and other Ontarians appreciative of the African presence in the Canadian mosaic strongly support Bill 80. Our strong support of Bill 80 emanates from the two fundamental principles which it contains: (1) the integration of all heritage languages into the school day and (2) the use of heritage languages other than English or French as languages of instruction.

Unfortunately, the government's position as outlined in the recently published yellow paper violates both the spirit and the application of Bill 80. This ill-advised position does not even reflect the truly expressed wishes of Ontario legislators. The legislators have unanimously endorsed Bill 80 twice, during first and second readings in the Ontario Legislature.

A major issue that now faces North American democracies is the lack of public trust in governments and politicians. Therefore, our children's education and socioeconomic future and your credibility will both be at stake if you fail to pass Bill 80, or a better bill, into law.

Sure, Bill 80 is a private member's bill and is therefore subject to parliamentary gimmicks by the governing party. However, we must ask the following questions: Should the good people of Ontario be denied their democratic rights to a sound government education policy? Should this denial be justified simply because a political party that professed support for the policy while in opposition now appears reluctant to initiate legislation to legalize it once in power? The simple answer to these questions was provided in the nature of the mandate given this government by Ontarians two years ago. It is a resounding no.

Let me now briefly review some of the debate surrounding the passage and implementation of Bill 80. In the standard Igbo democratic fashion, I will first acknowledge and address the following opposing views:

1. Taxpayers' money should not be spent to teach languages other than English or French in Ontario schools. The integration of heritage languages into the school day is among the best investments we can make in the Ontario school system. Present grants to the existing heritage language programs amount to about \$10 million a year. Some Ontario school trustees have recently put forward an inflated estimate of \$30 million for a fully integrated heritage language program in our school system. We believe that the \$20 million in extra investment will reap tremendous social and economic benefits for Ontario.

In a recent throne speech, the government emphasized its goal of world-class education to enable Ontario to compete in the global village. We hate to rain on the government's world-class education parade, but you cannot have world-class education for our children without teaching them the languages of the world. In fact, a government that offers "world-class education" to our children while denying these children fair opportunities to learn heritage languages could be ascribed dubious motives.

Opponents of the use of so-called taxpayers' money to implement Bill 80 may need to be taught that 3.5 million Ontarians of non-English or French descent also pay taxes. We trust that honourable members of this government are already aware of this important reality.

2. Heritage languages and cultures, especially those of Africa, have no application to or use in Ontario. In the 1600s the first French explorers to the northern parts of what is now Quebec could not communicate with the Indians. Luckily for them, an earlier, more experienced explorer who spoke French and the Indian languages had settled those parts. That earlier explorer, my dear friends, was an African from Madagascar. This is from the National Archives in Ottawa. His dedicated and learned interpretations enabled the French and the Indians to communicate. The African and his successors were therefore instrumental in the early settlement of Quebec and Canada.

The evolution of African heritage and legacy in Upper and Lower Canada, and later in Ontario, is well documented. A key element of that evolution, slavery, makes us feel dehumanized, hurt and reflective. Other elements, such as the tenacity and accomplishments of Afro-Canadians born in Ontario, Nova Scotia, the United States, the West Indies, Great Britain and Africa give us a flicker of hope. I will therefore not bore the committee with further treatises. Suffice it to say that African heritage and legacy have become the foundation for more contemporary presence of African, Afro-Canadian, Afro-American and Afro-Caribbean cultures in Ontario and Canada.

One cannot have a real culture without a language. Therefore, all attempts by community organizations, church groups, social agencies and school boards to articulate and protect so-called black cultures for Ontarians have become futile or, at best, fledgling. Integration of viable African heritage languages such as Igbo, Ashanti and Swahili into the day school system by law will provide safe and solid linguistic homes for fledgling black cultures in Ontario and Canada. The passage and implementation of Bill 80 will enable Afro-Canadians and other Canadians to fully discover and share the rich intellectual and socioeconomic potential conferred on Ontario and Canada by the African presence.

3. The school system will be cluttered with every language under the sun; other subjects in the school curriculum will be displaced. We reply that the mere use of the term "heritage" has diasporic connotations. The term implies the physical presence in Ontario of descendants of a particular heritage and culture. No heritage language without core community support should be considered viable enough to be taught in Ontario schools during the school day. In fact, even with core community support, parents of at least 20 pupils of any background must file a request for the particular heritage language to be taught. These constraints will limit the teaching of heritage languages to those schools where real needs have been verified.

The issue of displaced subjects is an interesting one. There is now little evidence of proper audits or optimality of the primary school subject loads across Ontario. At the risk of appearing to usurp or feign expertise in this area, we humbly suggest this: The implementation of Bill 80 will expedite the overdue reassessment and prioritization of primary school curricula in participating schools. Sometimes we wonder if the full-curricula/full-school-day arguments are just meant to scare parents away from raising critical questions about the inflexibility of the system.

4. Implementation of Bill 80 will lead to school transportation problems such as busing. Busing is now a fact of life for many schoolchildren in Ontario. Thousands of pupils in enrichment and other special programs are now bused to designated schools to attend. We believe the same flexibility could be applied to the cases where transportation challenges are faced.

5. Bill 80 threatens job security for teachers. If we ever heard a clever scare tactic, this is one. One of our key motives for supporting Bill 80 is the maintenance of education standards and rigour in our heritage language education. In our humble opinion, the passage and implementation of Bill 80 will actually extend higher professional teaching standards and methods to heritage languages, thereby guaranteeing teachers' jobs. We would also argue that school boards will find the implementation of Bill 80 an unexpected bonus in cost-effectiveness. The boards can optimally utilize the services of those underemployed teachers now qualified to teach heritage languages.

Other presenters have effectively addressed the other lame objections to Bill 80 with greater eloquence. I therefore conclude this section by reminding the honourable members of this committee of one indisputable fact: Adequate resources exist in the provincial government, the school systems, the universities and the Council of Ontario Communities to manage the implementation of Bill 80 for maximum results.

Finally, I now outline other benefits that Ontario will derive from passing and implementing Bill 80 with Igbo, Ashanti and Swahili content:

1. Enhanced intellectual and sociocultural quality. Knowledge of African languages and cultures is not encouraged in the present primary school system. I might add that this was probably the case with Japanese a mere 15 years ago. The passage and implementation of Bill 80 will help teach other Ontarians these sample facts, among others, about African peoples: There are over 22 million Igbos inside Africa. Literacy levels in Igbo land are as high as those in many European countries. Igbo culture and values are steeped in strong self-reliance, free enterprise and democratic traditions and history. Every year for the past 20 years there has been at least one Igbo in every major university in North America and Europe.

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2. Reduced cultural alienation of visible minorities. The Ontario government has been preaching multiculturalism for years now. The passage and implementation of Bill 80 will enable the government to put a bit of the people's money where the government's multicultural mouth is. The result will be a full psychological welcome to all non-English and non-French Ontarians and a liberation of their suppressed provincial and Canadian patriotism and pride.

3. Realized international business and economic potential. On the surface, most international business is conducted in English or French. Beneath the veneer of diplomatic and business niceties, most business deals in Asia, Africa, South America and many parts of Europe are cut in the local language. Just ask Joe Clark, Canada's Secretary of State for External Affairs. For Ontario to continue its economic and industrial leadership of Canada, Ontario's children must be educated in the languages of the world. This is particularly true if Canada is to establish trade and business niches in the Third World and the Far East.

The present inhuman and modern-day slavery called apartheid in South Africa and Namibia will eventually give way to vibrant free-enterprise democracies. When this happens, Azania and Namibia will finally assume their rightful leadership of economic and industrial development in Africa. Ontario must be prepared to lead Canada in reaping the tremendous benefits a free southern Africa will bring to Africa and the western world. The passage and

implementation of Bill 80 with Igbo, Ashanti and Swahili content will help prepare Ontario for a future leadership role in the true economic and industrial development of Africa.

The education system is the custodian and repository of knowledge, values, culture and tradition in any civilized society. The primary school system is the most important stage in the education system. The question before you today is whether to use the passage and implementation of Bill 80 to move civilization forward for all Ontarians. We will not hesitate to conclude that you will answer yes.

Thank you. I love you all. God bless you.

Mr. Chairman: I am going to have to limit us to one question per caucus because of the constraints of time that we have.

Mr. Allen: I appreciate your brief. I do not know that any presenter has heretofore told us he loved us. That is a very heartwarming discovery and I hope it will be followed by all further presenters. It is a very encouraging kind of thing.

Mr. Chairman: It is a precedent that deserves to be followed.

Mr. Callahan: He also said, "God bless you."

Mr. Allen: I wanted to ask you a few more details about the pupils who are now attending classes and also about the ones who you say might. First of all, it was not clear to me whether this takes place all in one school or in several schools.

Mr. Ogbue: This takes place in one school right now.

Mr. Allen: Which is that school?

Mr. Ogbue: St. Margaret Separate School on Carmichael, just off Avenue Road.

Mr. Allen: The other 350 pupils, approximately, would be applicants at the same school or in other parts of Toronto?

Mr. Ogbue: No, not at the same school. In other parts of Toronto.

Mr. Allen: I see. Near how many schools would they be clustered, in your estimation?

Mr. Ogbue: About 10 schools or so.

Mr. Allen: About 10 schools would handle those students.

Mr. Ogbue: That is right.

Mr. Allen: Can I just ask you a supplementary to that? Obviously, we have had some questions about the scale and pace of implementation. Many people are very nervous about suddenly having all the ethnic-language students deposited at school doors next September or the September afterward. Would you and your community be satisfied with a slowly paced but sure and measured implementation policy in the directions of Bill 80?

Mr. Ogbue: I believe every reasonable person would accept a phased-in implementation. It depends, of course, on how you define "slow" and "fast." If there is a clearly defined target, a clearly defined goal as to where we want to go and when we want to get there, I think most reasonable people will accept a phased implementation of the program.

Mr. Allen: All right. Thank you.

Mr. Davis: Just a quick question. In your presentation you talked about the transportation problem. Am I to assume from your suggestion that you would be busing students from across Metro or wherever to one centre to have their heritage language, or would you bus them out towards the end of the day to go to a school for their heritage language?

Mr. Ogbue: I would like to caution that I will not be implementing this program. It will really be up to the school boards and the school system to decide what is optimal. I just threw that out because I have seen in practice that we actually bus kids right now. I am saying that since that practice is established and people are usually flexible as to how they arrange it, they can meet the challenges. I am not going to go it. The school boards and the school system will manage that.

Mr. Davis: I am trying to get at whether there is a thrust; you mentioned it, so you must have some vision of what you see. I am asking whether it is a vision that takes the students at eight o'clock in the morning and buses all the students of a particular heritage community to school X to meet the requirement of 20 or maybe more, so that they are there all day, which means you could wind up with a school that may be, for example, all Portuguese. Or are you taking them out towards the end of the day and taking them to a situation where they augment 10 to give 20, so you can have it the latter part of the day?

Mr. Ogbue: No, I am afraid I will not give you a definite answer on this, because I believe there are people with better resources and better expertise actually to arrange this.

Mr. Davis: Thank you.

Mr. Chairman: Thank you very much, Mr. Ogbue, for your presentation today. We appreciate it very much.

Our next presenter is Serge Plouffe, directeur général, l'Association canadienne-française de l'Ontario. Bienvenue. Vous pouvez commencer.

ASSOCIATION CANADIENNE-FRANCAISE DE L'ONTARIO

M. Plouffe: Merci beaucoup, Monsieur le Président. Cela me fait plaisir de présenter aux membres du comité les points de vue de mon association. Je vais attendre un peu pour que tout le monde ait le temps de se connecter, comme on le dit.

L'Association canadienne-française de l'Ontario, qui regroupe 40 organismes francophones et est reconnue comme le principal porte-parole de la communauté franco-ontarienne, possède une longue histoire de lutte et d'effort visant à promouvoir l'usage du français en Ontario et, par le fait même, à élargir le patrimoine linguistique de cette province. Nous connaissons donc bien l'enjeu de la question débattue au sein de ce comité. C'est sans hésiter, et avec une grande conviction, que nous nous déclarons en faveur de

l'enseignement des langues ancestrales dans le contexte de la journée scolaire lorsque les personnes intéressées en font la demande.

L'apprentissage des langues ancestrales n'est pas et ne peut pas se trouver en contradiction avec l'apprentissage des langues officielles. Les langues française et anglaise jouissent de garanties constitutionnelles et juridiques au Canada et en Ontario. Le statut spécial qu'elles possèdent, fondé sur l'histoire de notre pays, ne devrait toutefois limiter en aucune façon les possibilités qu'ont d'autres langues de se perpétuer. De nombreux groupes ethniques et culturels, en donnant leur appui au projet de loi 8 qui est devenu la Loi de 1986 sur les services en français, ont exprimé clairement leur accord avec la dualité linguistique canadienne. Leur revendication présente reste tout de même entièrement légitime.

La transmission de sa langue aux membres d'une nouvelle génération permet à un groupe culturel de garder vivants son patrimoine historique, son sens de solidarité, ses traditions. La société, dans son ensemble, ne peut que profiter de cette grande diversité d'expérience qui s'enracine dans les cultures et dans les civilisations du monde.

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Mais l'apprentissage des langues ancestrales doit se faire dans des conditions optimales d'efficacité. C'est pourquoi nous pensons que ce processus devrait profiter de l'appui de l'institution scolaire. En étant inscrit dans le cours normal du curriculum scolaire, cet enseignement acquiert la légitimité qui lui convient. L'apport d'enseignants qualifiés lui assure, de plus, une qualité garantie par l'utilisation des meilleures méthodes pédagogiques.

Il existe, finalement, et je conclus là-dessus, une raison bien pragmatique de favoriser l'apprentissage de langues diversifiées. Elle apparaît dans le discours du trône prononcé le 28 avril dernier. Le gouvernement y exprime son désir "que la province prenne une place de premier plan dans la société mondiale du XXI^e siècle". Nos concitoyens originaires de différentes parties du monde peuvent grandement aider l'Ontario à réaliser ce souhait en développant des liens commerciaux et autres avec les autres pays. Plus qu'une richesse culturelle, les langues ancestrales deviennent ainsi un atout économique majeur que l'Ontario ne peut se permettre de négliger.

La présentation est courte et simple. On n'a pas voulu s'attarder comme tel à décortiquer le projet de loi et à proposer des amendements ou des accommodements. On ne voit pas cela, à l'heure actuelle, comme faisant partie de notre rôle. Notre rôle est plutôt d'apporter un appui aux principes énoncés dans le projet, c'est-à-dire de permettre l'enseignement des langues ancestrales. C'est pourquoi on considère comme très importante notre participation à ce débat et on a voulu s'inscrire quand même dans l'étude que vous faites, les membres du comité, et se prononcer en faveur de l'enseignement à l'intérieur de la journée scolaire et avec du financement des deniers publics.

M. le Président: Merci pour le mémoire et les commentaires. Il y aura peut-être une autre occasion de donner vos idées sur les articles individuels, à l'automne, si nous avons alors l'occasion de reprendre notre étude de ce projet de loi.

Are there questions?

Mr. Callahan: Just very briefly, I apologize for not being able to do it in français; I am just a neophyte here. I gather from reading your brief as best I could, and from listening to it, that you are suggesting that the heritage language be included as a subject during the school day, but you are not suggesting that it be a subject of instruction.

M. Plouffe: Non, on n'est pas allés plus loin dans notre pensée dans le sens de ce que cela devrait être une langue d'enseignement où on inclurait l'histoire, la géographie, les sciences et les mathématiques. A l'heure actuelle, la demande est de permettre que l'enseignement des langues ancestrales puisse se faire à l'intérieur de la journée scolaire et on ne s'est pas attardés à ce principe fondamental. On n'a pas poussé plus loin notre réflexion en ce sens-là.

Mr. Callahan: Are you endorsing, then, that the school day would be longer, or enlarged, to do that, or are you suggesting that it should be carried out within the period of the normal school day?

M. Plouffe: Encore là, si c'est le désir des conseils scolaires, le désir des parents, le désir du gouvernement et du ministère de l'Éducation de permettre cette instruction à l'intérieur de la journée scolaire, ou si par entente on est d'accord pour allonger la journée scolaire d'une demi-heure ou de 45 minutes, on n'a l'intention, à ce moment-ci, de se prononcer ni pour ni contre. On laisse plutôt au milieu, à la communauté, aux preneurs de décision de s'attarder sur le mécanisme pour dispenser le programme comme tel. D'après nous, est-ce qu'on doit le faire à l'intérieur? Il y a toutes sortes d'effets possibles, mais on n'a pas voulu se prononcer à ce moment-ci, sauf pour dire: Permettez-le.

Mr. Callahan: But you clearly prefer that to the way it is being taught in some areas, where it is done on a Saturday. You prefer that it be part of the school day itself.

M. Plouffe: Bien.

Mr. Callahan: Thank you.

Mr. Chairman: Perhaps it is fair to say that if we do meet in the fall, if we decide that later on, perhaps we could ask l'ACFO to think about some of the other implications and maybe correspond with us again before that on some of the other ramifications.

M. Allen: C'est un plaisir, Monsieur Plouffe, de vous voir ici encore une fois et de recevoir votre mémoire. Il y a longtemps que votre association lutte pour établir la langue française dans le milieu scolaire en Ontario.

Avez-vous un message principal? Quel est le message le plus important de votre association pour les groupes ethniques qui luttent en ce moment pour instaurer leurs langues dans le secteur éducatif en Ontario?

M. Plouffe: Il y a un message, je n'ai pas--

M. Allen: Nous avons beaucoup de difficulté. Chez les anglophones, par exemple, on dit qu'ici il n'y a pas assez d'enfants pour leur enseigner dans un département; ou, par contre, qu'il y en a trop pour les éduquer adéquatement. Avez-vous un message pour les groupes ethniques, basé sur votre expérience pendant cet effort?

M. Plouffe: Si je comprends bien votre question, Monsieur Allen, elle pourrait toucher le combat que nous avons livré dans le passé à la question de là où le nombre le justifie et au fait que nous en Ontario, les francophones, avons maintenant le droit, dans la Loi sur l'éducation, de faire éduquer les nôtres dans notre langue maternelle, peu importe l'endroit où nous résidons, et s'il n'y a pas possibilité de le faire dans un conseil scolaire, il doit y avoir des arrangements de faits avec d'autres conseils scolaires pour fournir cet enseignement-là.

Il est clair et net que, pour nous, cela a été un pas majeur de gagné. Cela fait maintenant partie de la Loi sur l'éducation de l'Ontario. J'imagine que cette même question va s'adresser aux groupes ethnoculturels qui voudront profiter de l'occasion pour faire éduquer ou transmettre à leurs enfants l'enseignement dans leurs langues ancestrales. C'est possible.

Pour nous la question, si dans un milieu on peut se permettre l'enseignement et que le nombre-- Je suis conscient que le chiffre magique que le ministère de l'Éducation a proposé est de 25; dans le projet de loi, on parle également, je crois, de 25 ou de 20. Pour nous, si dans un conseil scolaire donné, on peut se permettre de l'offrir avec 10, avec 15 ou avec 18, si c'est possible, faites-le. Il n'est pas question nécessairement qu'il faille absolument en avoir 24 et trois quarts ou 25 pour offrir le programme. Je trouve que si on a la volonté de le faire et que les ressources soient là, qu'on ait des personnes qualifiées pour le faire et que les parents le veuillent, bien, le message que je peux leur donner dans ce sens-là, c'est: Allez-y, faites-le.

M. Allen: Avez-vous de la difficulté avec les langues ancestrales comme langues d'instruction dans les écoles de langue française?

M. Plouffe: Dans les écoles de langue française? S'il y en a qui veulent-- C'est un peu différent chez nous parce que plusieurs groupes ethnoculturels qui font déjà partie de nos écoles sont là principalement parce que leur langue maternelle est également le français, que ce soient des Égyptiens, des Marocains, des Belges ou des Haïtiens. On ne partage pas nécessairement la même culture, mais on partage la même langue. Le problème ne se présente pas de la même façon tandis que, dans les écoles de langue anglaise, non seulement c'est la culture mais il y a un problème de langue. Chez nous cela se présente différemment.

Mais il peut y avoir un dialecte. Disons que les Vietnamiens avaient un dialecte et qu'ils aimaient la possibilité de l'enseigner aux enfants qui se trouvaient dans nos écoles. Moi, je n'y verrais aucune objection.

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Mr. Davis: Just a continuation on Mr. Allen's question, which I think is a very important question, and I appreciate your frankness. As I understand Bill 75, if there is one francophone anywhere in Ontario, he has the right to have his education delivered in that language. I just want to confirm that what you were saying is that you have difficulty with the present legislation as written in Bill 80, and with the government's legislation, which makes it 25. That would be consistent with your position within the francophone community.

M. Plouffe: Disons que c'est toujours arbitraire de mettre un chiffre puisque s'établit en même temps un minimum; cela peut établir un maximum. Je vais me répéter dans le sens que si le nombre identifié de parents

et d'élèves atteignait 22, mais on n'en avait pas 25 et qu'on ait l'argent pour le faire, pourquoi ne me le permettrai-je pas? Quand tu ouvres la porte, là tu permets 22. Bon, il y en a 18 à un moment donné. Mais encore là, on peut se permettre de faire l'enseignement à 18. Pourquoi ne le ferait-on pas? Cela, c'étaient nos objections à la clause stipulant là où le nombre le justifie; c'est que cela devient presque intenable.

Mr. Grande: Mr. Plouffe, thank you very much for your presentation. It is really important that you are here today supporting this program, supporting Bill 80; you are supporting certain sections of Bill 80. However, none the less, it is important that each language community or minority community in the province of Ontario support the others in these attempts to improve our education system for our children.

I want to make note of the fact that at least none of the minority groups that I am aware of has ever suggested that the province of Ontario should not be a bilingual province--in other words, that English and French should be the languages of instruction in Ontario and all Ontario children learn English and/or French. What they are saying is--and I just want to get to that question in terms of your support, because you have mentioned that you would want to see the heritage languages taught during the school day.

You know that the city of Toronto, because of a lack of legislation, has decided to extend the school day by one and a half hours in order to have the heritage languages during the school day. As a result of that, concerns, problems have arisen vis-à-vis the teaching profession in some of those schools where the heritage languages program is taught, and also some complicated formulas within that particular community of the school have to be devised where 50 per cent of the community wanted the extension of the school day in that particular school area.

Bill 80, of course, does not talk about the extension of the school day; it talks about the five-hour instruction period. Just so I am clear concerning your support in terms of during the regular school day, is it for the extension of the school day or is it for the heritage languages being taught during the five-hour instructional period?

M. Plouffe: Dans la présentation du mémoire, on l'a laissé et c'est écrit exprès: On n'a pas voulu définir davantage si c'était dans le contexte des cinq heures ou dans le contexte-- C'est cinq heures et demie ou six heures et demie?

Une voix: Cinq heures.

M. Plouffe: Cinq heures et demie? On ne s'est pas attardés comme tel à ce débat-là, on laisse cela plutôt aux politiciens locaux, à chaque conseil scolaire de décider de ce qui est bon pour sa communauté. Je trouve que, dans ce cas, le processus démocratique joue mieux son rôle que lorsqu'il est obligatoire qu'on ait absolument une demi-heure de plus ou qu'on l'inclue absolument dans les cinq heures.

Je suis très conscient qu'à présent les cinq heures sont très bien remplies par le curriculum déjà présenté, et si on veut permettre ensuite l'enseignement de langues ancestrales, il doit y avoir un alignement de priorités. Cela peut vouloir dire l'extension d'une demi-heure; c'est possible. Cela peut vouloir dire qu'on va tasser d'autres choses; c'est peut-être possible, c'est peu probable. Pour nous ce qui est important, c'est de permettre l'enseignement, mais de laisser à chaque milieu de décider où et comment il va le faire.

Mr. Grande: If you do not mind, I would just like to pursue that a little bit. I appreciate that you want to leave it to the school board, to the community, to the discussions between communities and school boards in terms of whether the day is extended or the heritage language is done during the five hours.

However, there is one very important distinction to be made. If the day is extended to five and a half hours, then are we talking about the curriculum, for which the Ministry of Education produces guidelines for the schools, being five and a half hours. Or are we saying that the extension of the five hours of the school day as it is now by half an hour means effectively that the heritage languages, in the words of the Minister of Education (Mr. Conway), are a continuing education function and not part of the curriculum?

In other words, I do not care whether the--well, I do care. I really do not want to see the five hours of the school day extended. I think that, for children, five hours during the day is quite enough for them to stay in school, especially the young children. Five hours is enough time for them to be staying in school.

However, the distinction is that if it is going to be during the five hours of the school day, then that becomes part of the curriculum for which the Ministry of Education produces guidelines, as opposed to being just continuing education, for which there are no guidelines by the ministry. It just happens by teachers who are not qualified to teach, etc., which implies that the heritage language then is a fringe, it is not fundamental to the education process.

M. Plouffe: Là-dessus, c'est clair dans la présentation, cependant. Si on est pour présenter un programme de langues ancestrales, on va le faire en bonne et due forme, on va le faire avec les meilleures méthodes pédagogiques de disponibles à l'heure actuelle, on va y mettre les ressources financières et les ressources humaines nécessaires pour développer les programmes et on va embaucher des enseignants qualifiés pour le faire.

Pour nous cela fait partie du principe de base que de permettre l'enseignement des langues ancestrales. On ne peut pas commencer à jouer avec cela, parce que si, dans la demi-heure qu'on veut ajouter, on n'y attache pas l'importance qu'on donne aux autres cinq heures, alors je pense qu'on joue un jeu. On répond à un besoin politique plus que de vouloir répondre à une nécessité fondamentale des citoyens de l'Ontario. Je m'oppose carrément à ce qu'on commence à jouer des jeux politiques dans ce sens-là et je ne pense pas que la communauté non plus accepte de se laisser bousculer dans ce sens-là et de voir qu'on a une victoire, on permet maintenant les langues, mais c'est tout. Mais pour nous, francophones, c'est la même chose. On a la loi 8 pour les services en français, on a une participation à la gestion scolaire, mais si on s'aperçoit qu'en réalité c'est du papier et cela ne vaut rien, on ne sera aucunement satisfait.

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M. le Président: Je regrette qu'il faille que je termine le questionnement. Merci encore une fois pour votre mémoire. Aussi, il y a possibilité que nous prenions contact avec vous dans l'avenir pour obtenir vos commentaires sur le projet de loi.

M. Plouffe: Oui? Cela me fait toujours plaisir de me présenter devant le Comité permanent des affaires sociales, c'est un comité intéressant. Non seulement vous étudiez les projets d'éducation, mais vous avez affaire au vrai monde. Merci beaucoup.

Mr. Chairman: Our next presentation will be given in another language--I am not sure which--because it is the Ontario Teachers' Federation, and we know how erudite these people are. Mr. McAndless, Mr. Cooney and Mrs. Foisy-Moon, would you like to come forward? They all speak with one tongue; we know that.

Mrs. Foisy-Moon: Some of us can speak a couple.

Mr. Grande: We can speak a different language, but we understand each other quite well.

Mr. Chairman: One hopes. Sometimes we are all speaking the same language and I am not sure we understand each other.

Mr. McAndless: I must admit my teachers of English a number of years ago were not too sure I had mastered that subject all that particularly well.

Mr. Chairman: You will fit in well here, then.

ONTARIO TEACHERS' FEDERATION

Mr. McAndless: I would like to introduce Mrs. Claudette Foisy-Moon, who is a member of our staff at the Ontario Teachers' Federation, and Jim Cooney, who is the president of the Ontario English Catholic Teachers' Association. They are here presenting the brief with me. Behind me I believe there is one representative from the Ontario Public School Teachers' Federation, Miss Vivian McCaffery. Mr. French was here for a short while, but I think he has since slipped out.

Mr. Chairman: Welcome. You are well aware of how we operate, having been here many times before. Please just lead us through the brief any way you like.

Mr. McAndless: It is a relatively succinct brief. The Ontario Teachers' Federation is very pleased and welcomes the opportunity to present the concerns of our members to the standing committee on social development.

OTF is no stranger to the issues concerning the heritage languages program. Our discussions with the Ministry of Education began in 1978 and have continued to be a part of our ongoing dialogue with the government.

In 1984 OTF established a task force on heritage language instruction. This group searched provincial, national and international literature to determine the characteristics, policies and trends being established as to heritage languages instruction and programming. The study concluded that the OTF policy on heritage languages was viable and should not be altered.

I will outline the points in that particular policy. I think the first one is probably one of the most important: (1) that OTF endorses the concept of a heritage languages program; (2) that any heritage languages program be offered only after the termination of the regular day school program; (3) that boards of education offering a heritage languages program appoint a person or persons to organize, co-ordinate and supervise the operation of said program;

(4) that the person appointed be responsible for the heritage languages program throughout the system; (5) that the day school principal not be required to be responsible for any heritage languages program offered in that school or in the system; (6) that the instructors for heritage languages programs be teachers who are qualified under the Education Act and the regulations; and (7) that the funding of heritage languages programs be only from sources other than those now used to fund regular day school and continuing education programs.

That is not a new proposition and it is not solely with heritage languages programs. We have advised the government for many years that when you introduce a new program, you fund the new program as well. We are quite consistent on that point.

At the same time the task force was at work, OTF made the following recommendations in a letter to the deputy minister in February 1984: that the ministry: (1) conduct a comprehensive independent study to identify the advantages and disadvantages of the integrated versus the extended heritage languages program; (2) review the integrated heritage languages program policy with specific attention to the matter of the five-hour instructional school day as it relates to the delivery of the core program; (3) conduct a study of the costs of providing heritage languages over the long term in terms of the Ministry of Education's financial commitment and the level to which a local school board should be required to support the heritage languages programs; and (4) conduct a study of the inequities in working conditions with respect to the overall provision of programs in schools providing the integrated extended heritage languages program and those schools that do not offer such a program.

OTF has continued to pursue the issues related to the heritage languages programs at regular meetings with the minister and with ministry officials. On December 17, 1986, the minister indicated his support in principle for Bill 80, but had serious concerns about the merit of the bill as written and its implications. He also indicated that the Ministry of Education would be undertaking a review of the entire issue with a view to amending the current heritage languages policy. Obviously, we are now all in receipt of the minister's proposal for action and it is OTF's intention to respond to that paper in September of this year.

OTF has concerns about Bill 80. Specifically, the proposed legislation sets forth a procedure for the establishment of heritage languages programs as a language of instruction or subject of instruction during a period of transition to English or French.

This fundamentally changes the nature of the present program in our present acts and regulations. Currently, there is nothing to prevent a teacher from giving a student assistance in a heritage language to facilitate learning. Using the heritage language as a transitional language is a delaying mechanism to the learning of English or French.

The heritage language program was meant to be a language and cultural program to give students an appreciation of their cultural, racial heritage. As educators, we support the concept of a heritage languages program, but our major concern must be for the basic school program.

Mr. Callahan: Some of the presenters--one of them, I think, was a Dr. Cummins from the Ontario Institute for Studies in Education--raised two points. I am sure you share some of the information that is passed from OISE.

He made two comments that gave me a bit of concern. One was that young people, without their heritage language being the language of instruction, might have difficulty in their ability to learn. That was the first one, and I believe I am correct in that regard.

The second concept was that the traditional tests given children to determine whether they have a particular type of learning disability are unfair when they are given to a young person whose first language is not English because you cannot really measure or determine the results accurately.

I can only assume that in making your statement as you have, you have access to that. I would like you to comment on both of those and perhaps tell us why Dr. Cummins made that observation and if you agree with it.

Mr. McAndless: My experience as a teacher would imply that for students to learn either English or French they should commence at as early an age as possible. In fact, a few years ago, and not that many, I remember the great debate about French immersion programs and early or late immersion and the pressure and research done in that particular regard. I was the principal of a French-language school where we had many parents who wished to have their children immersed in French, and they were attempting to enroll them in junior kindergarten. At that point, the students would not hear any English. It was interesting that when they came to school, those anglophone students were coping very well by Christmas. Certainly by the time they were in grade 2 or 3, they were fluently bilingual.

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So my experience in working with children over a period of time in that situation and taking students who were being educated in a language other than their maternal language is that they were able to cope extremely well, and in an environment and a location where there was not a great deal of francophone culture.

Mr. Callahan: Do I gather from that that what you are saying is that your experience in that particular situation, which is analogous--

Mr. McAndless: Yes.

Mr. Callahan: --to another heritage language, is that you did not see any difficulty in terms of the child learning the courses that he was being taught in a totally French immersion program?

Mr. McAndless: That is correct. In fact, all of the literature that I have read regarding the learning of another language stresses the fact that the earlier one starts and the immersion aspect of the language are two of the key components to successful mastery of that particular language.

Mr. Callahan: With reference to the second aspect of it, can you comment on that as to whether the--

Mr. McAndless: I believe we allude to that to some extent--

Mr. Callahan: --cards are stacked against a child whose first language is not English in terms of being tested for learning disabilities?

Mr. McAndless: Any of the tests for learning disabilities are very difficult at the best of times. Certainly, I think experience points out, and

we allude to it at the bottom of page 4, that there is nothing to prevent a teacher and, of course, a psychometrist from trying to use the heritage language to facilitate the learning and/or the testing, because the two of them go together.

Certainly, in a large number of boards, if you have a student who is having some sort of learning difficulties, it is our belief that every effort should be made to have the test administered in a language in which the pupil can function reasonably well.

Mr. Callahan: Thank you, Mr. Chairman.

Mr. Chairman: Just more in terms of the cultural context, often when you are asked questions on those tests that have a cultural context that is North American, the kid cannot relate to it.

Mr. McAndless: Yes.

Mrs. Foisy-Moon: You also have to make a difference between the heritage languages program per se and children coming to school who have not had any instruction in English and French and so are learning English as a second language or French as a second language, and so the transitional program is somewhat different. Indeed, the culturally biased tests have to be very carefully avoided in testing those students, or the language-oriented tests, indeed, also.

But you could find those same differences around Ontario. Ask a kid in Moosonee what a cow looks like.

Mr. Chairman: And it would be fun to ask a kid from Brampton--oh, never mind.

Mr. Allen: Thank you very much, Mr. Chairman. I am delighted to see a brief from the Ontario Teachers' Federation on this subject. I guess I would have hoped it would be a little more adventurous.

Might I pick up on what we have just been through in terms of the questioning? Certainly, everything you have said is quite true with respect to French immersion programs for anglophone majority language students. It certainly has been discovered that the immersion programs not only do not, over the long run, impede the acquisition and development of the English language by those students but also improve it and sometimes enhance other languages and general skills.

What the research on heritage languages indicates, however, is that where a student comes to another culture, becomes a minority member of that culture in terms of language and then goes on into education, exactly the reverse is true. To install him in an immersion program in fact impedes both his intellectual progress and his acquisition of English over the long run.

Mr. McAndless: I have not studied that. Again I would go back to my own experience following the Second World War, where large numbers of students were arriving in the country almost daily who were automatically immersed very much into that experience in an anglophone environment and who very quickly picked up the language.

Mr. Allen: They may have picked up the language reasonably quickly, but in actual fact the acquisition of concepts, skills, subject contents and

so on were all significantly delayed and there were other negative problems that had to do with the relationship of the child's family to his educational process, the capacity of the family to back up the child and to relate to the school where the language was not present and so on. The whole milieu of reinforcement of the child was missing. A lot of the social and psychological problems that the children of that generation had over time, recent research makes it quite plain, can be overcome by the extended use of heritage languages for transitional purposes.

I want to press you on another question. This province and this country have magnificent language resources in terms of the immigrant groups that have come here. A recent commission of the President of the United States has stated quite clearly that major problems the United States had in diplomacy and in economic competitiveness internationally can be fairly directly related in many respects to the lack of encouragement and development of multiple languages in the United States and through its school system.

What I really would ask is whether it does not make a great deal of sense for us to begin to move in our education system to provide a basis for multilanguage fluency in our country, recognizing the pre-eminence of English and the pre-eminence of French, but nonetheless the challenge that is there that we all really need to face as a nation in terms of our own international posture and dynamics and the growth that we all know from all the studies comes for students in the course of mastering several languages. Does it not make some sense to you as educators to try to move in that direction, beyond the recognition of cultural enrichment and into real capacity for fluency somehow on a multilingual basis in our country?

Mr. McAndless: I am not sure, Mr. Allen, whether you have not already made up your mind as to the solution.

Mr. Allen: I think I have. I am asking you.

Mr. McAndless: In response to that answer, there has been significant criticism over the last short period of time in regard to the Ontario education system that in fact we are not doing as fine a job in "the basics" as maybe we should in the ability of our students to read and write well and to do numeracy well.

An interesting aspect: Last June, approximately one year ago now, I cleaned out my desk and I found a 1957 timetable. On that 1957 timetable, for the grade 7 students of my class in 1957, I provided almost 900 minutes per week of English instruction in writing, spelling, grammar, composition and so on; I provided them with just slightly over 400 minutes in mathematics. I compared it with my timetable last year. The students in my school in grade 7 were receiving 380 minutes in English and 175 minutes in mathematics. That is all the time that was available.

We are now talking about another language, which may be wonderful; we have had people talk about mandatory physical education and so on. All of these things are wonderful, but the problem is that we have, I believe, particularly for young students in the primary and junior division, a five-hour day, which is about as much time as one can expect young minds to concentrate on the material. I do not know where we are going to fit all of the wonderful things into the school day and still accomplish those requirements that the Ministry of Education places upon the teachers of this province.

Mr. Allen: If I can continue, are you not aware that you could teach a third of your schoolchildren in a given grade their mathematics in French, and they would learn just as much French and as much math as they would separately in French classes and in math classes? If you are not aware of those models of instruction, I would really encourage you to look at them--

Mr. McAndless: I have looked at them, yes.

Mr. Allen: --because there is not the kind of total displacement and time displacement that you are suggesting.

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Mr. McAndless: There would be a tremendous employee displacement.

Mr. Allen: That is a secondary logistical question to making up your mind about the principle. I am not sure there would be so much employee displacement as employee addition, overall, in a school system that was even more ambitious in its objectives, seriously. So I think one has to look very carefully at, if you like, the economics of the school day certainly, but I think one also has to look at ways in which instruction in a language in a subject other than the language itself--

Mr. McAndless: We certainly have been doing that.

Mr. Allen: --has the capacities for leading us in certain directions that are very helpful in this respect.

Mr. McAndless: There is no question that much of the French instruction that is being provided now in what we call basic core supplants some of what was taught as English. It is very obvious that it has to because you cannot reduce to less than 50 per cent and still hope to turn out the same kind of product. We have some excellent teachers doing a superb job. Even with that, where you have less than half the time, they have to have done that. Of course, that is helpful, there is no question about it.

Mr. Davis: I have a quick question as a follow-up, in one respect, to Mr. Allen's comments. Mr. Grande has indicated that it is his thrust not to have an extended day but to keep it within the present day. Could you briefly give us an overview of the areas that probably would be reduced in order to accomplish the heritage languages program, notwithstanding--

Mr. McAndless: How much time do we have?

Mr. Davis: I think you could do it very quickly.

Mr. McAndless: When one sits down to look at the timetable, you have certain requirements outlined by the Ministry of Education in certain subject areas. Most jurisdictions over school boards have followed that up with recommendations for X number of minutes. One of the things that is occurring now is that, rather than use the five-day week that we were accustomed to, we have extended it in many jurisdictions to a six-day week, which gives you an extra day to play in the cycle. So instead of possibly having two periods of physical education in five days, you now have two in six days. As you extend that, you will simply stretch the rotation out. So with respect to the minutes that a student ends up being exposed to something, you try to take a little off each to develop the amount of time that is required to teach the particular subject.

Logistically, it is a challenge. It would be done, there is no question about it, but where would we take the time at present? I do not think there are many subjects on which we are spending time that is not necessary. There are people who would say, "You can drop out the art program; we do not need to teach art or music." Those are a couple of subjects that a number of people would say children do not need to do; they can do art and music at home. But we all know there are a large number of young people who do not have that opportunity, whose families do not have the resources or the facilities to provide that kind of program. So you are into the debate: Which are the basic subjects? The Toronto Star listed 15 of them and then, at the bottom, others, and within a little while came up with a 16th one. It is very difficult to know where you are going to find the time. It is usually a little bit off everything.

Mr. Davis: The second question, Mr. McAndless, is that you indicated you gave the ministry in February 1984 a series of recommendations. To your knowledge, have any of those recommendations been followed?

Mr. McAndless: I do not believe any of them have been concluded. We have not seen the results of any of them if they have been.

Mr. Davis: Can we inquire of the ministry whether it has undertaken any of those studies, as suggested by the Ontario Teachers' Federation in February 1984, and if it has and if any are available, so that we can review them, Mr. Chairman?

Mr. Chairman: I would be happy to.

Mr. Davis: In your opinion, can the Minister of Education mandate a program after school hours or on Saturdays? I cannot find it anywhere in the Education Act.

Mr. McAndless: Not being a lawyer--and I think we are going to move into legislation in making that decision--I am quite certain you could probably find a lawyer who would take either side of the argument and try to debate it; but I am not a lawyer.

Mr. Callahan: That is how they make their living.

Mr. McAndless: That is right. I really would not want to answer that question, because I do not feel competent to.

Mr. G. I. Miller: In regard to the (inaudible), you mentioned a six-day week or a six-day cycle.

Mr. McAndless: That is what we refer to it as.

Mr. G. I. Miller: Can you explain that a little further?

Mr. McAndless: If you cannot fit it all in five days, by adding another day you have one more day to work things.

Mr. G. I. Miller: That comes in the following week, then?

Mr. McAndless: That is right, yes. In other words, you start school at day one, go through to six, and then Tuesday becomes day one in the second week.

Mr. Callahan: They are not sitting on Saturdays.

Mr. Grande: I would like to ask a question. At the very first page of your brief you talk about the 1984 OTF task force on heritage language instruction and you mention the fact that you "searched provincial, national and international literature to determine the characteristics, policies," etc. I am wondering: You obviously came across the bilingual education acts in the states of Massachusetts, Florida, California and the bilingual education programs in the provinces of Alberta, Saskatchewan, Manitoba. What have you gleaned, or what has that particular task force gleaned from that experience and research in sister provinces to the west and in the states in the United States where they have fairly active bilingual education programs functioning and working?

Mr. McAndless: What we gleaned from that very simply was that the task force that had been established that studied and read all of these, after a very lengthy study, concluded that our present policy, which is found on page 2 and at the top of page 3, was in fact serving us in good stead and reflected a responsible position for the Ontario Teachers' Federation to take.

Mrs. Foisy-Moon may be able to add further, since she worked on that particular task force.

Mrs. Foisy-Moon: We were not looking at legislation or regulations per se. We were looking much more at programs, policy decisions by boards. We did not attempt to do an analysis of legislation, because we felt that whatever happened in Ontario would be uniquely Ontario and the legislators would look at those other trends. Our great concern was really program and trends in program, particularly in areas where there was a high immigration level or multicultural groups and the attempt there.

I have to say to you that I was not very impressed by any of the American programs--very few, in fact. I think some of our Canadian programs are far more effective and, indeed, I think what we are doing in Ontario is pretty good; it is the emphasis and how we change that emphasis. But I really felt that the legislation was not relevant to us. I like home-grown legislation.

Mr. Grande: That is fine. I do not happen to bring up the United States many times. However, certain advancements have been made. I remember as a teacher back in the 1960s that California was the place where experimentation in education was going on. Then the scene switched to England, where the scene of experimentation went on and we imported a lot of pedagogy from both California and England. In other words, all I am suggesting is: Let us look at the sister provinces. We know the province of Alberta does have bilingual education programs.

Mrs. Foisy-Moon: How many languages?

Mr. Grande: They have about seven or eight languages; they teach 50 per cent of the school day in that language and 50 per cent of the day in English. This goes on. As a matter of fact, I have research that I will table with the committee on that and gladly give you that information. A similar thing is happening in Manitoba and in Saskatchewan. Quebec, as a matter of fact, in the last three to four years, has integrated heritage languages during school hours, but as a subject of instruction, not as a language of instruction. In other words, it is going on in Canada. Ontario probably will be the last province for these kinds of innovations to come to. Alberta started in 1971.

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In other words, the logistical concerns have been solved. It is happening. The children are being taught bilingually in these provinces. We have the teachers who have been produced as a result of the need for those teachers. We have the legislation that has been enacted and changed. However, I must say to you that in those particular provinces the impetus came from the boards of education, not from the provincial level of government. In other words, it was the boards of education that said: "We understand what is happening here. We know the needs of our community and we will establish these programs as a response to our community."

You are aware, I am sure, that 38 different communities in Ontario that form this Council of Ontario Communities have come together supporting Bill 80. What would be the response of the Ontario Teachers' Federation, as a teacher body, to those communities, whose members number, I guess, somewhere between two and three million people in Ontario, in terms of these kinds of questions that they are asking? What is your answer?

Mr. McAndless: I think our answer is in our brief. From our study of the heritage languages situation and the programs that have been prepared, and from fairly careful study of how they actually work, our position works reasonably well and is a sound position from which to function. It is one thing to have five or six heritage languages that are predominantly a single community language and another to have 35 or 36, of which a dozen or more may be in one community, and to try to accomplish the same thing that you have done in a community with one. The logistics do not equate.

Mr. Grande: Just as a final question, I want to return to Alberta because I think in this area of bilingual education that province is probably a lighthouse to the country--not in terms of French-English, but in terms of other languages.

Mr. McAndless: I have discussed this with the president of the Alberta Teachers' Association, and we have had some long talks and comparisons. Our recognition is of the fact that what works in Alberta probably could not work in Ontario per se. You cannot usually transplant and move it.

Mr. Grande: Let us not transplant, sir, but let us innovate here our own home-grown, homemade bilingual programs. Let us have the school boards and the people who are responsive look after the concerns and the needs of our communities.

You brought up the point that there are people here who are upset about the fact that our kids do not read, write and spell and they are concerned that we supposedly do not do a good enough job in our schools, whereas in Alberta, if I remember correctly, students have been found to be able to read at a higher level than students in Ontario. I do not want to equate them, but supposedly, if those students in Alberta who are taking these bilingual classes do well in English, because that is the test in fact--

Mr. McAndless: I have not seen that literature. You are telling me that, but I have not seen that information available.

Mr. Grande: I guess we will have to get that report from OISE and produce it for you.

Mr. McAndless: I would appreciate it.

Mr. Grande: Thank you.

Mr. Chairman: There is a Toronto Star at home reporting on this study that we could probably send to you.

Mrs. Foisy-Moon: They do not teach in French in all Alberta schools, either.

Mr. McAndless: No. They do not tend to be bilingual. In Ontario this is one of the thrusts that I believe we have made, and I think we have commenced some way in that regard. What we are now referring to is a trilingual aspect, which I would not for a moment suggest is not a tremendous idea, but I think we have to see the programs and, as teachers in Ontario, we have to ensure that the quality of all of the programs is maintained and that they are of the highest possible standard.

I would allude to some of the recent news announcements in the past year of students from Ontario who have competed on the world level in the area of mathematics, to the credit of the Ontario education system. I think the one thing that comes through within our whole brief is that we have a strong commitment to the very best quality of education in all aspects: whether it be in English, in French, in heritage languages, in numeracy, in Canadian studies, in physical education or in whatever aspect, that it be the very best that can be provided and that we in no way jeopardize one program for another.

I think that is the bottom line. If someone would like to tell me that that is not the position the teachers of Ontario should be taking, I will listen to him, but he is going to have to give me a lot of information to convince me that that is not a position we should be taking.

Mr. Chairman: I am sure that is also the position that most of--

Mr. Grande: That is the position I take and have been taking for the past 20 years.

Mr. Chairman: I think we could find a consensus on that one without much trouble.

Mr. Callahan: Just very quickly, one of the statements that was made during the hearings that caught my attention was the question about the person who has a heritage language that is not developed during the elementary school years, assuming he does not do it on a Saturday or after school. We spend large amounts of money later on in life perhaps to teach that person the language he would have automatically had had it been developed from that stage, recognizing that the world really is, in a cliché, very small today and it may have an impact on our trading ability, and also, I suppose, knowing one another well enough that we can make love rather than war.

It has been a long time since my kids were in elementary school. I know when they were in secondary school there were periods where they sat there on what they called a spare. Are there any spares in elementary school?

Mr. McAndless: You have not been in an elementary school.

Mr. Callahan: No spares.

Mr. McAndless: There are no spares.

Mr. Callahan: Why are there spares in secondary schools?

Mr. McAndless: Principally, there are very few at the present time at the secondary level, but a large part of that aspect is that there were fewer subjects in those days, but it was a logistics problem of trying to timetable people. Today they do have computers and I think you will find that at the secondary school level the students do not have long periods of time without anything to do. Computers are able to do it much faster, timetable them and keep covering the programs. But certainly at the elementary level, spares are unheard of.

Mr. Callahan: My kid was in the secondary level. Every time I turned around he had a spare. Obviously, there is no room for this to be dealt with, but one would hope that they would be encouraged to do it after school. I think there are legitimate reasons for that--

Interjections.

Mr. Chairman: I would like to thank the representatives of OTF for coming today and I appreciate your input. We will probably decide in the next few minutes where we go next with this. We may be back to you for more input if we deal with this again in the fall.

Mr. McAndless: Thank you very much.

Mr. Chairman: I have a small surprise for the members just before we move to discussion of our future--

Mr. Callahan: Has an election been called?

Mr. Chairman: It is not that big a surprise, Mr. Callahan. There is no election.

Yesterday, just as I was leaving, I was introduced to two members of our audience who have been here for most of these hearings, Victoria Luise and Sophie Charlota Hoffmann. They are participating in Chinese heritage language classes here in Toronto and they did a little routine for me that I was really impressed by. I thought I would call them forward just so you could hear it to see the kind of results of some of these programs.

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Would you like to come forward and sit in a couple of these big red chairs here? Your father has already sat there.

The great thing is that they introduced this yesterday with, "Ein, zwei, drei." Then they went into the Chinese.

[Performance in Chinese]

Mr. Callahan: What amazes me is that I understand--

Mr. Chairman: I should tell you that the French translation was wonderful.

Miss Victoria Hoffmann: We will also sing one in Japanese.

Mr. Chairman: You will sing one in Japanese as well?

Miss Victoria Hoffmann: Yes.

[Performance in Japanese]

Mr. Chairman: Thank you, Mr. Hoffmann, for allowing us to exploit them this way.

I just thought it might be interesting for the members to get a little of the actual human side of the issue that we have been talking about in terms of the issues at hand.

Mr. Allen: We have just given Hansard the ultimate test.

ORGANIZATION

Mr. Chairman: We have with us now a list of the names of people who still wish to appear in the fall as a result of the advertisements that we put out. In the next little while, if there is no vote--I had been expecting that we would be interrupted by a vote in the House, actually, before this--but if there is no vote, we could start to try to make some decisions about where we want to go. If we conclude this today, we would not have to reconvene on Thursday to continue this.

Just to put this in context, I was approached by the whips to know when we would like to sit. Not having had this meeting, I felt a little constrained, but I suggested that perhaps two weeks set aside for us in the month of September would be the most we would want. I did that without any liberty. If people thought there was more time, I am sorry. In view of the other kinds of committee pressures that are out there, especially with a sort of sister committee, the select committee on health, which would use up a lot of our members, asking for three weeks--I realized it would be hard for us to get more than that. As I understand it, there has been an acceptance of the first two weeks in September as being available to us if we wish to make use of them.

I would let you know that these are the people who have approached us at this point wanting to be heard; there may be others who come in. The clerk tells me we should be able to accommodate these within the two-week period and still have some time for decisions on clause by clause. My suggestion would be that we have a discussion about that possibility and about any further ideas for people you would like to have come for the next stage, what the focus of the next stage of our deliberations may actually be.

I will open it up to discussion.

Mr. Davis: Did we advertise all through Ontario?

Mr. Chairman: Yes.

Mr. Davis: To date, Niagara Falls is the farthest away. We have not had responses from the ethnic communities in, say, Sudbury, Sault Ste. Marie or Windsor?

Mr. Chairman: I will let the clerk respond to that.

Clerk of the Committee: Mr. Davis, we advertised in 104 papers all across Ontario. That includes all English dailies, French dailies and all ethnic papers in the province. This is what we have received to date. The farthest is Ottawa. There are three groups from Ottawa.

Mr. Chairman: So from what we have at the present time, there would be no evident need for travel, but we could easily subsidize, for instance, the Ottawa people to come down here without too much trouble within the present budgets that we have had struck.

Are there any further questions before we get on to deliberation on this in terms of what you have before you? Okay, if not, are there other people, groups, etc., that are not here or have not been before us up to this point that you would like to hear from? Let us deal with that first. Then we might deal with what the focus might be of how we handle the next section, and then we will decide whether we wish to reinstate people or send out more information to people who have already been before us. Are there new people we have not heard from who are not on this list that you know off the top of your heads at this stage?

Mr. Grande: I would like to mention to the members of the committee that the legislative library has been doing some research for me in terms of the western provinces. I would like to make mention of Wendy MacDonald, the research officer of the legislative research service, who has done a tremendous amount of work for me.

While she was doing that research, I asked some of the people from out west and from the province of Quebec if they would want to come before this committee to give us their expert advice on the establishment of these programs. I would like to report to the committee that Georges Latif, the chef de service de (inaudible) aux communautés culturelles of the Ministry of Education, has said he would like to come. However, this committee would have to write a letter to the Minister of Education to release him to come. Also Mr. A. Bussière, director of the language services branch, department of education in Edmonton, Alberta, and Mrs. Iliana Handford, heritage languages co-ordinator, department of education, Winnipeg, Manitoba, would like to come. Of course, they would need the approval of their deputy ministers, or their ministers, in order to do so, but they certainly expressed an interest in attending.

I do not know whether it is normal procedure, so I ask whether the travel expenses of these people would be incurred by the committee. What is the situation?

Mr. Chairman: Generally speaking, if it were approved, the decision is first usually made as to whether or not people wish to have out-of-province guests. Then if you choose to have them, we would write the ministers involved in each of these provinces. We might, because you know we have already made mention of these names, basically leave it to the ministers to decide whom they would like to send as representatives. That is usually the protocol.

Usually, yes, when we do bring people and it is approved and we go through that, we pick up the air fare, etc., for those people.

Mr. Grande: I would ask the committee to allow the clerk or you, Mr. Chairman, to write to the Ministers of Education or the Deputy Ministers of Education of these provinces to have them come before us. As I mentioned before, these are the provinces where these programs have been established and

these are the people who have been at the forefront of establishing them. It would certainly be informative to us, and to many other people in the province who seem to be working on the basis of some fears, that these people come before us and give us their expertise in this area. So I would urge the committee members to allow this process to take place and these people to come.

Mr. Chairman: I am suggesting, then, that there be a motion from Mr. Grande. That is the easiest way of dealing with it.

Mr. Grande: All right. Let me put a motion to that effect.

Mr. Chairman: A motion has been placed that we would invite people from the three provinces. There is time to hear them and we do have sufficient funds to pick up a small number. If there is a consensus on this, then I will let it go and we can vote. I gather there is no time limit on it, so we would have to get up very quickly. If there is debate, then we would have to hold it over probably until tomorrow. Is there debate on this or is there general consensus? General consensus.

All right, then I will issue those kinds of invitations. I would suggest we will have to meet again on Thursday. This vote is-- Oh, we have at least 10 minutes? Then why do we not see if we can handle this in 10 minutes; then we will not have to come back on Thursday.

We will invite those three additional representatives, one from each of the provinces, through the ministers involved. Are there any other individuals you would like to have represented?

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Mr. Davis: Can we have some information from the federal government about the number of heritage languages programs they are now funding in the province of Ontario, where they are and who they are?

Mr. Chairman: Yes, definitely. Is there any other information gathering like that you would like? None.

Mr. Grande: I asked the Minister of Education in the Legislature, and I do not know whether this is possible or not, but I certainly would like to have, if it is possible for them to come, Dr. Shapiro, the deputy minister, who, as I said before, has made recommendations to the provincial government about third languages in the schools, and also Dr. Jack Berryman, who works for the Ministry of Education. He has written a PhD dissertation on this matter and he has a tremendous number of recommendations for the Ministry of Education to pursue. I would like to hear from him if it is possible.

Mr. Chairman: That is very straightforward. We can just add requests for those civil servants to come.

Mr. Grande: And the minister himself, of course, if he can squeeze it in.

Mr. Chairman: Well, if you wish that.

Mr. Grande: I would certainly wish it.

Mr. Chairman: That takes much more of our time. You are talking about a half a day. You cannot bring in any minister, let alone Mr. Conway,

and expect to deal with him in a shorter period than that. I would just advise you of this.

Mr. Callahan: How many days have we used up thus far? I would say three days already, judging from--

Mr. Chairman: My guess would be that you might be wise, at this stage-- A minister does not usually attend at a private member's bill unless requested. At this stage, I would suggest we probably not add him to our list, but rather other resources. The parliamentary assistant, no doubt, will be here. That would be my advice.

Mr. Grande: Mr. Chairman, I take your advice on it. However, the minister made a statement in the Legislature which implies that, as a result of a lot of information gathering, certain conclusions were made by the Ministry of Education, and I would like to find out how it arrived at those conclusions.

Mr. Chairman: Might I suggest, then, that what we do is to try to schedule him in on the last day before we deal with clause by clause? We can have that meeting with the minister that last afternoon before we deal on the final day with the clause by clause. Okay?

Mr. Callahan: Are you now dealing with suggestions for the other ones from this list?

Mr. Chairman: What I am suggesting, I think, is that we would try to give the individuals an opportunity to be heard, but probably not as long as we would give groups. I would use the normal rule of thumb of perhaps 15 minutes for a presentation by individuals and half an hour for a group. I would imagine from this that a number by that time may decide not to come forward, and we should have little difficulty working out at least a day for clause by clause, which is my guess, at the end. Is that acceptable to everybody?

Is there anything else you would like in terms of information to go out to the groups that have already been before us, which may have felt in some ways a little rushed when they came to us? As Serge Plouffe was saying today, he was able this time to deal with the principle but not really with some of the other questions that members put to him. Shall we invite them for input that might affect our clause-by-clause considerations and, when we receive it, determine whether or not we want to add them to actual presentations? Would that be all right? Okay.

Mr. Grande: If I may make a comment, I certainly would like to hear from the Ontario Teachers' Federation and the Association of Large School Boards in Ontario.

Interjection.

Mr. Grande: No. The thing is that before we get into the clause by clause, I would like to make sure we have a bill that is going to be implementable. Those people who are on the front line of implementing programs should have some input into amendments and possible amendments. I would hope they would turn their minds to possible amendments to this legislation.

Mr. Chairman: I will just remind members that we would have the possibility of doing clause by clause here, and if we did not complete it,

then it would be easy to refer it back to the House at that stage, saying that we would like it to go to committee of the whole, and continue deliberations on it at that stage. Given that this is a private member's bill, the calling of it is not in your hands, Mr. Grande.

Can you basically leave the rest of the niceties of this to me and the clerk to work out, and I will try to keep all three caucuses advised of any changes that might take place other than the things we have just agreed to.

Mr. Callahan: Which are the two weeks in September? I am trying to think of the ones we have allocated to the select committee on health. I think they are the last two weeks and the first two in October.

Mr. Chairman: Last two weeks, that is right.

Mr. Callahan: So we would be talking about the first two weeks--

Mr. Chairman: First two weeks in September, starting September 1, which falls on a Tuesday.

If there is nothing further, then we will adjourn the committee. We will not reconvene on Thursday, but in September. It may be that we will require a meeting of the steering committee just prior to that. I will keep you advised.

The committee adjourned at 5:45 p.m.

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